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ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, April 20, 2011 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Meetings held on May 19, 2010, June 16, 2010 and July 21, 2010.

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D. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6745: 557 Howard Street

Owner of Record and Appellant: Robert S. Guggenheim,
c/o A-1 Property Management, P. O. Box 822, Pacifica, CA 94044

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Agent for the Owner: Robert Noelke, c/o A-1 Property Management,
P. O. Box 822, Pacifica, CA 94044

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ACTION REQUESTED BY APPELLANT: The Appellant has requested more time to comply with the Notice of Violation, and wants a reduction of the 9X Investigation Fee imposed for work without proper permit.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Frank Lee, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272
Debra Walker, Vice President	Ann Marie Aherne, BIC Secretary (415) 558-6126
Kevin Clinch, Commissioner	Teresita Sulit, Secretary (415) 558-6267

Reuben Hechanova, Commissioner

Warren Mar, Commissioner

Mel Murphy, Commissioner

Criss Romero, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Francesca Gessner, Deputy City Attorney (415) 554-4762

2. CASE NO. 6746: 149 Buena Vista Tr.

Owner of Record and Appellant: Billy W. Ewing, 149 Buena Vista Tr. , San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: That the City and State have been slow in their assistance.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. PUBLIC COMMENT

F. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Ann Marie Aherne at (415) 558-6126** or the **Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6126 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD
Wednesday, April 20, 2011 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED January 18, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for April 20, 2011 was called to order at 9:07 a.m. by President Lee. Roll call was taken by Secretary Ann Aherne, and a quorum was certified.

BOARD MEMBERS PRESENT:

Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Mel Murphy, Commissioner
Criss Romero, Commissioner

Ann Aherne, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVES PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
Alan Davison, Sr. Housing Inspector
Steve Panelli, Chief Plumbing Inspector

Francesca Gessner, Deputy City Attorney

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B. OATH: Secretary Aherne administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Meeting held on May 19, 2010, June 16, 2010, and July 21, 2010.

Commissioner Hechanova made a motion, seconded by Commissioner Walker that the May 19, 2010 minutes be approved. The motion carried unanimously.

Commissioner Hechanova made a motion, seconded by Commissioner Walker that the June 16, 2010 minutes be approved. The motion carried unanimously.

Commissioner Hechanova made a motion, seconded by President Lee that the July 21, 2010 minutes be approved. The motion carried unanimously.

D. NEW CASE: ORDER OF ABATEMENT

1. CASE NO. 6745: 557 Howard Street

Owner of Record and Appellant: Robert S. Guggenheim,
c/o A-1 Property Management, P. O. Box 822, Pacifica, CA 94044

Agent for the Owner: Robert Noelke, c/o A-1 Property Management,
P. O. Box 822, Pacifica, CA 94044

ACTION REQUESTED BY APPELLANT: The Appellant has requested more time to comply with the Notice of Violation, and wants a reduction of the 9X Investigation Fee imposed for work without proper permit.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Senior Housing Inspector Alan Davison stated that this case is an illegal use of the occupancy with a store at the ground floor. Mr. Davison said that it has a ground floor fronting Howard and the second floor has been illegally converted into residence of two dwelling units established without proper permit. Mr. Davison stated that this stems from the City Attorney Task Force inspection which was initiated following the referral of the San Francisco Police Department. Mr. Davison continued to report on the following items:

- A dwelling on the Howard Street side consisting of two bedrooms and one kitchen, and one kitchen in the rear occupied approximately 2/3 of the second floor.
- Second floor consisting of five bedrooms, one kitchen, one full bath, and a separate toilet room off the pantry, and there was wiring and plumbing throughout.
- Some history of the case: On April 2, 2010 DBI received notification from the City Attorney's Office.
- On **May 4, 2010** the Inspector participated in the Task Force Inspection.
- On **June 10, 2010** a Notice of Violation was issued with the requirements of compliance.
- On **November 18, 2010** there was a first Director's Hearing and the hearing officer gave the property owner a 30-day continuance.
- On **July 13, 2010** the Hearing Officers gave appellant a 20-day advisement period to file the requisite permits or the Director's Order would be issued.
- On **February 11, 2011** there was an office visit where the owner met with Director Vivian L. Day and reviewed the nature of the illegal second floor construction. The work performed was rudimentary and did not continue construction so the Director reduced it from \$93,000 to \$20,000.
- On **February 11, 2011** the AAB Appeal was filed.
- On **March 25, 2011** a building permit was filed, # 201103252827 to comply with this Notice of Violation.
- The outstanding violations, Department records indicate that the requisite permits have not received final clearance to legalize or remove the second floor residential use.

- Reason for the appeal, the appellant is requesting more time to comply and a reduction of 9x investigative fee required by the San Francisco Building Code.
- Remedies required to abate violations are: Owner must obtain building, plumbing, and electrical permits, inspections, and return the property to its last permitted use or legalize current use and alterations.
- Recommendations are as follows: The Notice of Violation (NOV) was issued on **June 3, 2010** for illegal conversion and has been unabated for 10 months.
- The property owner did not file the requisite building permits to legalize or remove the second floor residential use until **March 25, 2011**, nine months after the NOV was issued.
- The property owner did not address the illegal residential occupancy on the second floor until eight months after the NOV was issued.
- The property owner's failure to comply with the NOV has prolonged life safety hazards and therefore impacting the safety of the occupants and the neighboring properties.
- Imposing and enforcing the Order is necessary to ensure that the property owner follows through and complies with the NOV issued by the Department.
- The findings are: Pursuant to section 107-a.5 of the San Francisco Building Code, the Abatement Appeals Board does not have jurisdiction to reduce the investigation for work without permit.
- The recommendations are: To uphold the Hearing Officer's decision to impose and enforce the Order of Abatement with the estimated value of work from \$93,000 to \$20,000 as reduced by the Director. Also to ensure the property owner reimburses commission provided by section 102-e of the San Francisco Housing Code.

President Lee called for any questions from the Board.

Vice-President Walker said that she had a couple of questions. What was the permit applied for in March, and is it for legalizing the residential use or is it for returning it to its original approved use?

Inspector Davison stated that he believes it was to put it back to its original use.

Commissioner Walker asked the following questions and Inspector Davison responded: Is the property occupied? Yes. How many tenants? Seven people on the second floor and I believe five in the rear property. Do you have any indication of how long this tenant has lived there? No I do not.

Commissioner Hechanova asked how long have the two units been rented?

Inspector Davison stated that as far as the Department's history shows, the inspection was done on May 4, 2010 so our history starts at that point.

Commissioner Hechanova said that there could be a history of when payments were made by the tenants to the current owner, and perhaps that information could be found at the Rent Board.

The Abatement Appeals Board Members and Inspector Davison continued to discuss the following items:

- Commissioner Hechanova asked is there any valuation that determined the drop from \$93K to almost 4 ½ times to \$20K. Just dating from our date receipt it was February 11, 2011 when the agents and owner met with the Director and found that the work was rudimentary and not finished construction and therefore reduced from \$93K to \$20K.
- Commissioner Hechanova asked of that amount is there a timeline associated with the work that could be done within a certain precedent of what the permit and the work that could be accomplished? The Director's Order was to be issued to have 10 days to file, 10 days to get the permit, 10 days to pick up the permit and 30 days to get the work done.
- Commissioner Hechanova asked if the owner had gone through the normal process how long would it take? You have to file the permit, get the occupants out of the property and commence the work to revert back to its normal use, so I estimate maybe two to three months.
- Commissioner Romero asked if it is a commercial building, and if the two units there are illegal? Inspector Davison stated yes to both questions.
- Commissioner Romero asked if there has ever been an application to legalize these units. From the records DBI has it does not indicate that, and I am not aware of any permits that have been issued to legalize it.
- Commissioner Clinch stated in the chronology on March 14, 2011 the attorney was hired and it says for acquiring possession: Are they trying to evict the tenants? Commissioner Walker suggested that maybe the Board could hear from the appellant or the tenants.
- Commissioner Walker asked if the zoning allows for residential use. I do not have that information.
- Commissioner Romero said that perhaps Deputy Director Sweeney could answer the questions that he and Commissioner Walker have.
- Deputy Director Sweeney stated that the only information that he has on the building is the legal use is a B occupancy which would be commercial, and I believe they would definitely have to go for change of use or change of occupancy.
- President Lee asked how much time is the appellant asking for. I do not know if there is a specific amount of time the appellant is asking for.

Alex Fong, Housing Inspector, stated that he did the inspection and was at the meeting with the Director and the agents of the owner so he could probably answer some of the Board's questions. Inspector Fong said that Director Day not only reduced the estimated cost from approximately \$93K down to \$20K and she made that valuation based on the photographs that he presented, but she also provided extra time to allow for compliance. Director Day stated that as long as the attorneys for the owners provided documentation that they were in progress towards evicting the tenants so they could proceed, then DBI would not go forward with code enforcement. Mr. Fong stated that there is no verbal official extension that they already have, and DBI already received a document following that meeting stating that they would be proceeding with that action. However, they could not do it right away after the meeting because he believes the eviction proceedings could not happen until a permit to actually dismantle the illegal units was issued. Mr. Fong stated that the Department has no eviction proceeding documents at this time, because it was not possible until they got the permit issued they could not go forward. They said that is

what they would be doing, and I have been doing the Task Force inspections for about 14 years for the Housing Inspection Division, and in these particular cases the City Attorney instigates the Task Force inspections because they have problems with complaints from the neighbors that go to the police. In this particular case the tenants upstairs in the illegal conversion area have been having parties on the weekends and cause quite a disturbance that resulted in multiple police reports being filed which DBI has copies. Inspector Fong said that is how the police got word of it in the first place and disturbance of the neighborhood and the commercial resident below who is present to answer any questions the AAB may have.

President Lee asked if Director Day asked the owners to submit an application to possibly change the use or legalize the units.

Inspector Fong stated that he does not believe the Director asked the owners to do so. Mr. Fong's Notice of Violation already directed the owners to do that, so there was no need to and it was up to the owners to legalize the units or revert back to commercial use or legalize the residential use.

Commissioner Romero asked if the extra time and the reduced cost on the fine was to get in there and tear out the existing kitchens and bathrooms and bring it back to the original use.

Inspector Fong said if that is what they chose to do they do so, but the main thing was to get moving and file an application.

Commissioner Hechanova stated of the pictures that were shown it also looks like there is an upper bunk with a ladder going up to it, and he asked if that was essentially a dangerous condition? Inspector Fong said that was typical of four of the rooms in the back when the partitions were put up, and he does not know if the tenants created those but they looked to be pretty sturdy and it is not flimsy wood.

Commissioner Hechanova said that this is furniture that was built in place as opposed to furniture that was brought in. Inspector Fong stated yes definitely. Commissioner Hechanova stated that a photograph exhibit shows exposed wires on the ceilings and no cover plates on the switches, so that was not corrected right away. Inspector Fong said that he has not been back for inspection to see if it was corrected, and he does not have photographs showing more extensive problems.

President Lee called for the appellant to come forward.

Mr. Bob Noelke stated that he was representing the owner of the property, and they are asking for approximately 90 days. Mr. Noelke said that the building permit was issued and a Notice of Termination was just filed a week or so ago by attorney Clifford Freed, and he has given the tenants a 60-day Notice of Termination. Mr. Noelke said that the appellant has the permit and they want to revert the property back to office space, and it should be noted in the history that when this space was rented it was a commercial space. The work that was done took place without the approval of the owner or his authorization or knowledge, and there are approximately seven people living there.

Mr. Noelke presented the following information:

- In 1993 part of the problem at that time was the \$93K was based upon an estimate.
- He went through the permit history and there were some partitions built in the 1930's and 1940's and some bathrooms were built in the 1920's.
- The property was originally a warehouse and the top floor was used as warehouse space, and it was a shifting to determine which things were done with permit and without.
- There was a fair amount of work done with partitions and there was an elevator put in over the years.
- It took time between that \$93K to bring it down to \$20K, and that was because we had to do research by going to the property, etc.
- Appellant is asking for 90 days so that the tenants can vacate and the owner can remove what was illegally put in, and bring the property to Code compliance, including handicapped access, a compliant bathroom, and simply leave the space the way it is and the way it was originally intended to be.
- DBI staff has been very helpful, the Director and Chief Inspector were very cooperative and Mr. Todd Schlessinger is present.

Commissioner Murphy asked if any of the tenants have leases.

Mr. Schlessinger stated there is the original rental agreement which is a commercial rental agreement, and he has copies of it and it was from 2005 and it is a month-to-month agreement. The tenants have been given a 60-day Notice by Clifford Freed who specializes in landlord/tenant cases, and this is a contentious issue in San Francisco when there is a residential unit that is non-conforming. They still have tenant rights under the residential rent stabilization ordinance, so it is a very tricky situation and any "gas thrown on this fire" will exacerbate it: This fire is well under control and they have a definite timeline to complete this.

Commissioner Murphy asked if Mr. Schlessinger could be more specific, and he stated that he understands there is a commercial space on the lower level and possibly there was a commercial lease for that.

There was further discussion between the Commissioners and the Appellant:

- Commissioner Walker asked if this residency began in 2005, because looking at the shower and so on it looks like these are much older than that.
- Appellant said those were there but showers are allowed in a commercial unit in the event that you are dealing with toxics, so the fact there is a shower there does not dictate anything.
- Commissioner Walker asked if the appellant has ever been there to inspect his property?
- Appellant stated yes he has.
- Commissioner Walker asked how much was Mr. Schlessinger renting the units for?
- Appellant stated \$4,500 per month.
- Commissioner Mar asked if this involved all seven of the tenants or was it just one person and everybody sublet from him which was mentioned in the report?
- The appellant stated that the original lease in 2005 was with one master tenant.

- Commissioner Mar asked if that person was still living there? Appellant said no.
- Commissioner Mar asked if the illegal work was done by the tenants? Appellant said yes to his knowledge, and the quality of the work as you can tell by the pictures it certainly was not done by a general contractor that he would have hired.
- Commissioner Mar asked if the property owner or property manager was aware of this work? Appellant stated no and he has been the manager for 15 years.
- Appellant said that in the kitchen area there are cabinets that are not attached to the wall and it has a very temporary nature to it, something like one would find at IKEA, Goodwill, or somewhere.
- Commissioner Hechanova stated that at the time it was rented out since it was a commercial space, at certain points there should be fire extinguishers.
- Appellant stated that there are fire extinguishers at the property, and Mr. Fong could testify to this.
- Appellant said when the City Attorney came to the property with the Task Force, the Fire Department was there, Vector Control, Alex Fong, and there were about 8 to 10 people going through the property.
- Commissioner Hechanova asked if there was a requirement to have the fire extinguishers checked on an annual basis.
- Appellant stated due to budget cuts they do not do that anymore, and in a commercial space he has no knowledge that the Fire Department has to go through the property and make the owner comply by having fire extinguishers.
- Appellant said this property has an R-3 occupancy, and there is one unit not legally there.
- Commissioner Hechanova asked if there was a lease for the property?
- The appellant said yes, and if the master tenant wants to sublet and the sub-tenant is viable financially, etc. then the owner has to accept them and cannot unreasonably withhold consent.
- Appellant stated that they are just asking for more time to work through the legal issues with the tenancy and do the construction and have it all legal.

President Lee asked if there was any public comment.

Ms. Elaine Milosa stated that she owns the business below the unit in discussion now, and there have been people living there since she bought the business in 2007. Ms. Milosa said that she is not aware that they are a business of any sort except to have parties on the weekends, and they are very disruptive to her business below. Ms. Milosa stated that the tenants have made threats to her employees, left trash and broken bottles; there is lots of noise disrupting her employees on a regular basis. Ms. Milosa's employees fear altercations with the tenants and human feces has been placed at her front door which started all of this and brought the police into it, and she has pictures. Ms. Milosa stated that the tenants have been an ongoing problem and if the property returns to commercial tenancy she would be delighted.

Mr. Scott Tyler stated that he has no legally binding information so he does not think he needs to be sworn in, and he was originally going to sit and observe this but he noticed something in the police report which was interesting. Mr. Tyler said in regards to this use he would imagine this is extensive sort of thing in the SOMA district that has gone on for decades, and the artists have a long history going back to the 1990's and it is something to be looked at. Mr. Tyler said that he

does not know the usage or the current tenants, but if they are going through the Rent Board and eviction process, even if the owner wants to get them out they cannot do it until they go to the Rent Board. Mr. Tyler stated that he does not know the current relationship between the sub-tenants and the owners, but if it is a process going he would recommend they get more time because they will need it to peaceably resolve this. Mr. Tyler said the City is well aware of the large number of illegal conversions to residences from apartments to artist warehouses to large multi-group buildings. Mr. Tyler stated that there are a large number of business owners living within them, and if the owner was there as a single occupant he believes there are a lot of laws that would allow that as a caretaker on the property. Regarding the police report, it looks like the tenants have had an unfortunately negative interface with the people downstairs and he knows one of the parties, Officer Larry Bertrand, was under investigation. Mr. Tyler said if this is regards to his report then he would refer to others.

President Lee called for rebuttal.

Senior Housing Inspector, Alan Davison, stated that time was granted for compliance and staff has been monitoring the case. The Department recommendations are still the same, to uphold the decision to impose and enforce the abatement with estimated work performed and to comply with the Notice of Violation.

Mr. Bob Noelke said that he was representing the property at 557 Howard Street, and he is requesting 90 days for the reasons outlined above. Mr. Noelke stated that once they have time then they can comply and have a Code complying building with a handicapped accessibility to the second floor. Mr. Noelke said that he thinks it will be a win-win for them.

There was final discussion that mentioned if 90 days was enough time because the owner had to get electrical, plumbing, and building signoffs. In addition, the issue of illegal occupancy was addressed. Commissioner said it would be good to allow as much time as possible to resolve the issue with the tenants. Commissioner Walker stated that she is troubled that the City is losing space that was probably occupied by artists in the community so she hopes the appellant can find a solution. Commissioner Walker stated that she has concern about the condition of these spaces and the habitability issues that are apparent in the photography, so health and safety issues are of utmost importance.

Commissioner Murphy made a motion, seconded by Commissioner Lee to allow 120 days to complete the work, or the Order of Abatement and assessment of cost will be upheld.

Secretary Aherne called for a roll call vote:

President Lee	Yes
Vice-President Walker	Yes
Commissioner Murphy	Yes
Commissioner Mar	Yes
Commissioner Romero	Yes

The motion carried unanimously.

2. CASE NO. 6746: 149 Buena Vista Tr.

Owner of Record and Appellant: Billy W. Ewing, 149 Buena Vista Tr.,
San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: That the City and State have been slow
in their assistance.

**Testimony, deliberation and possible action to uphold, modify or reverse the Order
of Abatement.**

Chief Plumbing Inspector Steve Panelli said that there was a complaint filed regarding 149 Buena Vista Terrace on November 4, 2008. Mr. Panelli stated that one of the Plumbing Inspectors went out to the premises, met with the owner and found that work was being performed without a permit at that time so he posted the building with a Correction Notice in order to make corrections to what was installed.

Mr. Panelli continued to report on the following items:

- On **December 12, 2008** there was an office visit from George Wilson who told staff that he would come down with permits of work that was performed. The permits he had were for work performed, but not for the work performed inside the building.
- Part of the work that was performed was a backwater valve that was installed to prevent any kind of water entering into the building and flooding out the lower unit.
- The work that was performed was for the house trap and he believes 10 to 15 feet of building sewer that was outside of the building.
- On **December 16, 2008** there was a second posting for correction.
- On **December 18, 2008** there was a second letter sent as there was no compliance.
- On **March 17, 2009** there was a Director's Hearing.
- At the Director's Hearing, the hearing officer recommended that a permit be obtained within 30 days and the work to be corrected.
- On **May 21, 2010** a permit was obtained to correct the wrong address that was on the first permit, and this permit was to change 149 Buena Vista Avenue to the correct address of 149 Buena Vista Terrace. There was also a permit to add a backwater valve and reroute four-inch main sewer. No inspections were performed on this permit.
- Subsequently another notice was sent stating that the owner was still not in compliance and the work was not completed.
- Mr. Panelli's understanding, in speaking to the District Inspector, was that there was a lower unit and a backwater valve was put in front of the bathroom or unit to prevent any backwater from entering in from the main sewer in the right location but was never inspected.
- The problem occurred again so somebody went out and put in another backwater valve in front of the building right before it exited the building.
- Mr. Panelli discussed the problem of rain water leaders that are coming off the roof, and waste lines from the bathroom and kitchen and stated that if there is any kind of stoppage it could actually start to back up into the building.

- Mr. Panelli stated that in San Francisco there is a combined system to where the backwater valve has to be located just for lower fixtures only, not for rain water that is above so it can be controlled or above waste lines.
- Mr. Panelli said that at the time the Plumbing Inspector went to the location he found the above mentioned situation so he posted the building and that is where the Department is to date.

Commissioner Murphy asked what was the remedy for this situation; possibly a different location for the backwater valve? Mr. Panelli stated that there are two things: One is the main backwater valve has to be maintained by the owner of the property, because if something gets inside it can cause a problem. Mr. Panelli also said that one of the inspectors went to the site and asked that the lid be removed and the top was removed and he found there was something that was wrapped around it. Mr. Panelli said that this was one of the reasons there might have been a failure prior, and the remedy would be that the actual fixtures that require backwater protection have a valve that is put in a proper location, and if there are any other fixtures that are located on that system that would have backwater protection as well.

Commissioner Murphy asked if this is going to require some digging and identifying of lines. Mr. Panelli said that was correct and he has been told there is a backwater valve for that lower unit or the bottom area for that bathroom and there is a backwater valve there for protection. Mr. Panelli stated there is a laundry that is not on that system, and his suggestion would be a backwater valve that would be just for that laundry and everything that is in that lower area is protected.

Mr. Panelli said that there are areas in the City that tend to flood. Mr. Panelli stated that there is a backup from the main sewer, then there is a relief and he is willing to show anybody that design. Mr. Panelli stated that it is his own design on how to relieve the problem.

Commissioner Murphy asked about the remedy for the washing machine. Mr. Panelli said if a backwater valve is put on the washing machine and a backwater valve for the lower bathroom and everything is in the correct location that should stop any future backups as long as it is maintained and checked regularly. Mr. Panelli mentioned that he has not seen this location.

President Lee asked if the violation specifically said that the location of the backwater valve was in the wrong location. Mr. Panelli said yes this is the issue. President Lee said that his understanding is there is a backwater valve near the property line to catch the rain water and sewage that should not be there. President Lee asked for confirmation as to whether or not it should be on the other side so that even water could flow into the sewer. Mr. Panelli stated that it should just be for everything below the fresh air vent and house trap.

President Lee stated that Commissioner Murphy also asked if there are other flow vents. Mr. Panelli said that there are two total: One is for the lower unit or bathroom and one is after that goes to the main, and the front one is the issue.

Mr. Billy Ewing, one of the owners of 149 Buena Vista Terrace said that he prepared a statement for the purpose of explaining their side of the dispute. The statement read:

"I understand by your rules and regulations that a Notice of Violation has been issued to me, and violation of an improperly displayed backwater valve at my home in San Francisco. My tenants and I are affected by the problem and we (myself and Hanna Murphy) before you this morning to state for the record that the violation is misplaced. The violation was found after my partner, Michael Allen, and I once again calling the Public Utilities Commission (PUC) after having a flood of sewage water backing into our home. We then, that November 4, 2008, were incredulous that after calling the PUC yet again at each event, we were being cited by the agency we had looked to for answers throughout this ordeal. The level of this belief was heightened by an employee of the PUC telling me that afternoon that the main city pipe in front of our home was undersized according to city mapping. He then added that work we have paid our contractor to do in the street should have been done by the city. The statements were not solicited from him but rather volunteered. Armed with this information, I made an appointment with our then District 8 supervisor Bevan Dufty. At the meeting in December 2008, I spoke with Mr. Dufty; I was first made to meet with Laura Spanion of the PUC. She acknowledged our many calls to the agency but quickly added that they had nothing to do with the problem. Her demeanor changed upon hearing what I had been told by one of her employees. We have asked for input on our problem of flooding and received a letter that was dated June 2, 2006, from the Assistant Chief of Claims, Michael D. Haas. His basic response was to quote Section 103 of the Public Works Code the property owner is completely responsible for the maintenance and repair of a private sewer. These words along with our engineering contractor George Wilson cost us approximately \$40,000. \$40,000 is a large sum of money to be paid for sewer replacement on a three-unit building. George Wilson of L & W Environmental Services replaced our sewer, and that is why I'm standing in front of you this morning. He replaced the sewer in 2006 without a backwater valve, only to install it with an additional cost after the system's first failure. We learned in 2010 that a backwater valve should have been installed at the time of sewer replacement. This information along with PUC responsibility beyond the curb was addressed in a survey inspection. This inspection was done on 04/26/2010, by Kenneth Young of the Plumbing Inspection Division for the city of San Francisco. My account here today is brief in comparison to the many months of disruption and reconstruction of our sewer. The years of 2006 through 2008, being in the dark as to the degree of fraud that had taken place we have a sewer that was somehow done without the proper degree of oversight. We believe that not only was the permit for the backwater valve not obtained but the entire system had not been properly installed and submitted. This has been a long, arduous, and circuitous route, and yet we are still without a solution. We had at one time hired a lawyer, but that seemed to go nowhere. He gladly received payments that got us nowhere. We are now awaiting an arbitration hearing at the State Licensing Board against George Wilson. What is perplexing – How was George Wilson able to install a complete sewer system without the proper oversight and city permits? We had been asking for the city's assistance on this issue before, during, and after its installation in 2006, yet it was due to our repeated calls to the PUC that led to finding this error in 2008. It is he, George Wilson, that we feel should be made to pay these fines and fees for violations that never should have taken place."

President Lee said that it is unfortunate that sometimes the public relies on the City for all the answers for certain things, but homeowners should seek advice from professional consultants as well. President Lee said that when Mr. Ewing said "lack of oversight" he did not think that the

Department of Building Inspection failed him in that sense, because staff does not tell customers how to solve the problem, and the City does not study their building. President Lee stated that staff may not know the extent of the problem and say, "You need to install a backflow preventer", but there could be a number of ways to do it. President Lee said that Mr. Ewing chose to install it so that is why it is now under the Abatement Appeals Board's jurisdiction, since it was installed incorrectly. President Lee stated that staff cannot look at Mr. Ewing's plans and say that they are missing something unless it is obvious, so this is something that the customer and engineer have to decide. President Lee said that staff would not know by looking at the plans that there is going to be a sewer problem, but the backflow preventer is in the wrong place.

Commissioner Romero asked if Mr. Ewing sued the contractor. Mr. Ewing said that he did not sue him but there is an arbitration hearing pending with the California State Licensing Board against him.

Mr. Ewing said that they contacted a lawyer to get to the bottom of all of the unanswered questions that came up, and in response to President Lee's comments they only found out when the city inspectors came to their home that a backflow valve should have been installed at the time of sewer replacement. Mr. Ewing stated that they did not know when they paid to have the sewer installed that it was their responsibility to have a backflow valve installed, and Mr. Wilson did not mention that this should be done until almost at the end of the installation. Mr. Ewing said that they had spent so much time and money that they thought they did not need the extra expense. Mr. Ewing stated that they depended on the engineer/contractor to do the job correctly.

Commissioner Romero asked when Mr. Ewing sought some type of resolution. Mr. Ewing stated that it was the end of 2009 or some part in early 2010 and only now is he getting letters stating that they are choosing which arbitrator to give the case to. Commissioner Romero asked what remedy Mr. Ewing was seeking, and said that he appreciates the fact that sometimes a person gets in contact with somebody who is less than capable of working on their property, and that is one of the reasons why they would look for an insured licensed contractor so if something like this happens and unfortunately they have to pursue some legal remedies, but his assumption is if Mr. Ewing had to pay any fees, those types of things would be wrapped into the remedy that he is seeking from the arbitration adjustment board.

Mr. Ewing stated that he gave the arbitration board a figure of what he was looking for since the work was incorrectly installed, and they suffered many floods since the installation of the new sewer.

Commissioner Walker asked if there would have been a mention of the backflow when the original permit was applied for or not. Mr. Panelli said that the permit was for the house trap and the building's sewer outside of the building and staff did not get inside the building. Mr. Panelli stated that there was no work that was done inside and the permit was obtained after the fact. Mr. Panelli said that the inspector did not know what was inside and he is looking at what is being replaced, and there should have been some kind of backwater protection and the secondary valve was installed after the fact and without permit.

Commissioner Mar stated that he agreed with President Lee that the public is responsible for the contractors they hire, and asked with the second installation of the backflow valve did Mr. Ewing ask the contractor if he had a permit and if he did pull a permit then there was no inspection requested otherwise DBI would have inspected it and signed it off. Commissioner Mar said that the plumbing inspector would have gone out to the site and upon inspection said if it was done right or wrong, and this would have been the time Mr. Ewing could have called the contractor and said he was not paying him until the inspection passed.

Mr. Ewing said that there was a lot of confusion with this case and he believes the permits are dubious at best. Mr. Ewing stated that there were a few months in between the installation of the sewer and the installation of the backflow valve, and they were not done continuously so at the point they were cited for violations for not having a permit, it seems that should have happened with the installation of the sewer. Mr. Ewing said if the installation was properly permitted and inspected the inspector would have said "Where is your backflow valve", but he did not.

Commissioner Murphy stated that he was curious about the work that was done on the inside of the building, and asked if there was a permit or not. Mr. Ewing said he would say no and none of this came to light until they got the violation in 2008. Mr. Ewing stated that the sewer was completed in 2006, and there was a subsequent flood and they called the PUC again and had their inspector come out because they could not believe there was still flooding after spending so much time and effort to get the problem fixed, and that is when the inspector gave them the citation stating that the backflow valve was incorrectly placed. Commissioner Murphy said it happens that people get a contractor that does a lousy job, but it is still the duty of the Department to enforce the Code and make sure the work is done correctly.

Mr. Ewing stated that they have always tried to be responsible homeowners and do the right thing for their tenants, and that is demonstrated by the amount of money and time spent having this done and they had diligence with contacting the PUC and calling the City and asking for assistance. Mr. Ewing stated that he understands it is ultimately the homeowner's responsibility, but he thinks that they look to professionals and agents with expertise to tell them whether they are going about things the correctly and in this instance they only got the direction after the fact. Commissioner Murphy stated that Mr. Ewing seems to be a very responsible homeowner, but he just had bad luck with the wrong contractor.

Commissioner Hechanova asked when was the last time that the basement or problem with flooding occurred. Mr. Ewing said that he believes it was last year in 2010 but he could have his tenant speak, because she is the one most affected by this since she lives in the apartment that floods. Commissioner Hechanova stated that he was curious about the most recent rains, some that were fairly of volume earlier this year. Mr. Ewing said that there has not been any flooding this year in 2011. Commissioner Hechanova said that he is trying to connect whether the system had failed or basically might have been a condition of something back then, and he believes if the system is at fault something of a volume that would have pushed it to a failure point would have been most recently when the rains came so maybe the system is working.

Mr. Ewing said that the instances of flooding that they had began in 2005 until present have been sporadic and have been at odd moments, so he cannot speak to how it happens or why but he

does know that it was during times of heavy, heavy rainfall. Mr. Ewing stated that when there was the El Nino periods of rain flooding happened but for whatever reason it did not happen this year during the heavy rainfall.

Commissioner Romero asked if Mr. Ewing had the property inspected when he bought it. Mr. Ewing said yes it was inspected when he purchased it 18 years ago. Commissioner Romero asked if the problems started before or after the installation, and said when the sewer was either modified or replaced was it because they were starting to have problems, or did they start having problems after the contractor fixed it. Mr. Ewing said that they started having problems with some flooding in the unit before it was fixed so they called their insurance company, and they came out and did the camera work. Mr. Ewing stated they also called a local plumber, Roto Rooter, to put traps in the street but that did not work. Mr. Ewing said they contacted a number of other plumbers but nothing was resolved.

President Lee stated that the problem of flooding seems to still exist, and there is still a Notice of Violation of the backflow preventer in the wrong place and he asked what Mr. Ewing's intention was to solve this. Mr. Ewing said that he plans to do what the City Code states but they are exhausted financially and emotionally at this point and do not have the funds at this time. Mr. Ewing stated that it seems that throwing money at this problem has gotten them nowhere but at the hearing today and there has been a lot of inconvenience for them and their tenant. Mr. Ewing said that his tenant has been displaced from her home maybe six or seven times and he is amazed that she is willing to support him, and he thinks most people would be ready to sue him. President Lee asked if Mr. Ewing could get the Notice of Violation lifted and asked when he could get the work done. Mr. Ewing stated that he hopes he could do it as soon as arbitration is complete, and he hopes that they would see things in their favor. Mr. Ewing said that he knows this is outstanding and they need to get it fixed but cannot afford to right now.

President Lee called for public comment.

Ms. Hannah Murray was sworn in and stated that she just wanted to back up what Mr. Billy Ewing was saying about their ambition to resolve the issue, and it has been constant and ongoing. Ms. Murray said that this particular instance is for the backflow valve and the placement of it, but there could be a potentially larger issue with the sewer in the main road. Ms. Murray stated that it seems that the floods happen after a time of very little rain so there is a lot of debris and leaves in the gutters and on the roads, because they happen to live on a hill and they make a corner in front of their house and that is the corner where Mr. Ewing was stating the PUC employee, when one of the pipes makes a turn is actually smaller than stated on a city map. Ms. Murray said that she does not know if it has to do with what is being talked about today, but she just wanted to point out that it seems that is the crux of the problem.

President Lee called for rebuttal.

Mr. Panelli stated that he wanted to answer some of the field questions that were brought up, and one was there was not a permit obtained so that is one problem and second if a permit was obtained the Department would have resolved the issue at that point. Mr. Panelli said that the third thing is that the contractor that was hired was a licensed contractor and is allowed to do that

work since it is what he was hired for. Mr. Panelli stated that flooding happened but one of the inspectors found that someone put a bypass in that was lifted open, and normally if it is raining there would be flooding but there was not any flooding, and one of the reasons is because somebody put a bypass in and when that closes if any rain gets in then it goes to the sidewalk or on the side of the house and DBI would have never allowed that. Mr. Panelli said that if the backwater valves are put in the right location then there should not be any issues as long as they were maintained. Mr. Panelli mentioned that he has another design that might be able to help as well for a relief point at the house trap so if there is a major flood it would relieve the water and allow it to escape out onto the street instead of into the building, and he is willing to help the owner resolve this issue. Mr. Panelli stated that the plumber has contacted him and has offered to fix this problem with the owner but DBI has had no inspection on the previous permit.

Commissioner Murphy asked if it was a relatively big job to fix this. Mr. Panelli stated that he has not been out to the site, but he knows they are willing to make the corrections to resolve this issue. Commissioner Murphy asked if this entails tearing up the living spaces or anything. Mr. Panelli said he could not answer 100% because again he has not been there.

Commissioner Hechanova stated that on the chronology of time, as Mr. Ewing described this train wreck dates back to 2006 and Inspector Panelli was involved or somehow has been to the property, so he asked if he could describe what he may have done in 2006. Mr. Panelli said that he has no idea how his name was involved because he cannot remember being out there at all. Commissioner Hechanova stated that Mr. Panelli's name was mentioned in a letter that Mr. Ewing submitted and Mr. Panelli said that he had no recollection of it, and does not see anything on any permits that have his name on it. Commissioner Hechanova stated that perhaps his name was listed inaccurately, and said to Mr. Ewing that the Commission is very supportive of staff and wanted to make sure they are not in any way mis-listed.

Mr. Ewing stated in 2006 Mr. Davantes came to their home after a flooding episode, and the reason Mr. Panelli's name is there is because he started logging everything and keeping business cards. Mr. Ewing said that Mr. Panelli gave them his card but he believes it was probably less than two minutes and he came into the basement, took a quick look around, gave them his card and left.

Mr. Panelli said that he may have been the supervisor at that time, and Inspector Davantes may have put him down as part of the record and he thinks that may be how he may have been involved.

Commissioner Walker stated that this is really unfortunate and the Board "feels their pain" but unfortunately the Building Code is the Building Code and that is what the Abatement Appeals Board is there to apply. Commissioner Walker said that her concern is when there is a flooding situation at a place and the owner comes in to do a permitted replacement or job, it is unfortunate that staff does not check to make sure if there is a backflow valve issue.

Mr. Panelli stated that plumbing inspectors will do the inspection and check to make sure there is a backflow valve if it is required and they are inside of the building but they may not see the lower unit if there is no work being done and they are just looking at that section. Mr. Panelli

said if the inspector went inside the building and the owner did a major replacement, at that time, they would say the owner needed to put in backwater protection at this location as well and would not approve the job. Mr. Panelli said the inspector would approve what is in the street but not what is in the unit.

Commissioner Walker asked about the backflow valve issue that was wrapped up and caught open. Mr. Panelli said that he never saw it. Mr. Panelli stated that was installed after the installation of the sewer and somebody went out and installed these backflow preventers, and there are no permits for the installation. Mr. Panelli said that DBI never approved them and were never able to correct the incorrect location. Commissioner Walker asked if 30 days to obtain a plumbing permit for the backwater valve and doing the final inspection is reasonable. Mr. Panelli said yes it is reasonable and it is a job of breaking up the concrete or removing the old backwater valve, capping off the bypass going to the location of where the laundry is, the opening of that line, and installing another backwater valve or whatever else is below the location that is getting flooded but it is definitely doable in 30 days.

President Lee stated that Mr. Ewing had three minutes for rebuttal.

Mr. Ewing stated that his only comment at this point was he heard the gentleman say 30 days and it has been quite a few years and they have not gotten any finality out of this problem. Mr. Ewing said that he thinks it is honest contractors, conscientious workers, people that do as they say and they were told that their work would be permitted, and he thinks what the gentleman just said before and like he was saying that the work inside the home, the installation of the sewer was not permitted. Mr. Ewing stated that now he is just left with a lot of doubt and a lot of fear around this issue.

Commissioner Murphy asked what Mr. Ewing saw as being reasonable and he understands all the other problems, but what the Board is trying to do is figure out how to work with him yet he is saying that 30 days is going to be hard. Commissioner Murphy stated that the bottom line is Mr. Ewing has to do it and he asked if the Board gave him 60 days to fix this would that be helpful. Mr. Ewing said that he thinks 60 days would be helpful, but he does not think he would get it done and he is looking to the arbitration with Mr. Wilson.

Commissioner Romero stated that he can guarantee that this is not going to happen before the arbitration.

Commissioner Walker added that it does not affect whether Mr. Ewing has to get the work done or not, and he could proceed on and it will not affect his litigation.

Commissioner Romero said that the arbitration process could take a year or two.

Mr. Ewing stated that he would just ask that the board be as lenient as possible, knowing that he and his partner have tried their best to get the situation corrected. Mr. Ewing said that he would just ask for leniency as far as the timeline is concerned to investigate, acquire permits, to hire conscientious, hard-working, honest contractors to do the work that needs to be done and he does not know how long that is going to take. Mr. Ewing stated that he wishes he could give a 30, 60,

or 90-day answer but he does not know but he does know that there is work to be done and so far all the work they have done has been for naught.

Commissioner Murphy said he thinks the commissioners are really trying to work with Mr. Ewing.

Commissioner Walker made a motion to give Mr. Ewing 60 days to interview some people and get the work done.

Commissioner Romero stated that Mr. Ewing should get references.

Commissioner Mar asked if the permit was in place. Mr. Panelli stated that there was a permit obtained May 21, 2010 to do the corrections of the backwater valve, but no inspections have happened.

Mr. Ewing stated that the permit was actually a permit to take the place of a permit that was presented to them for 149 Buena Vista Avenue, and it was for a different owner and listed a different address. Mr. Ewing stated that he believes this permit was somehow to correct a permit for the one that should have taken place in 2006, not a permit for the corrective work.

Commissioner Murphy said that the commissioners have heard everything, but somebody needs to "carry the ball" and since he is the owner Commissioner Murphy suggests that Mr. Ewing does.

Commissioner Walker stated that if there is an issue about the other permit that is out there, she suggests that the Notice of Violation needs a new permit to resolve the issue and she moves to uphold the Department's suggestion except that it is amended to 60 days.

Deputy City Attorney Francesca Gessner clarified Commissioner Walker's motion was to give the appellant a 60-day stay to comply and if he complies within 60 days then the order will not issue, and that she is upholding the assessment of costs. Commissioner Walker said yes this was correct.

Commissioner Walker made a motion, seconded by Commissioner Murphy, to give the appellant a 60-day stay to comply and if he complies within 60 days then the Order of Abatement will not issue, and the Board is upholding the assessment of costs. The Commissioners voted as follows:

<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>

The motion carried unanimously.

E. PUBLIC COMMENT

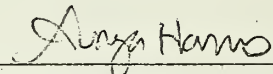
There was no public comment.

F. ADJOURNMENT

Commissioner Walker made a motion, seconded by Commissioner Hechanova, that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 10:40 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sonya Harris", is written over a horizontal line.

Sonya Harris
Commission Secretary



ABATEMENT APPEALS BOARD

Wednesday, May 18, 2011 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED February 15, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for May 18, 2011 was called to order at 9:00 a.m. by President Lee. Roll call was taken by Commission Secretary Ann Aherne, and a quorum was certified.

BOARD MEMBERS PRESENT:

Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Mel Murphy, Commissioner
Criss Romero, Commissioner

Ann Aherne, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
Anthony Amable, Plumbing Inspector
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Francesca Gessner, Deputy City Attorney

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B. OATH: Commission Secretary Aherne administered an oath to those who would be giving testimony.

C. NEW APPEAL: Order of Abatement

1. CASE NO. 6748: 1429-V Hyde Street

Owner of Record and Appellant: My Stephen LLC, 17888 Cochrane Road,

Morgan Hill, CA 95037

2. **Owner of Record and Appellant:** Stephen Hou, 10130 Lockwood Drive, Cupertino, CA 95014

ACTION REQUESTED BY APPELLANT: Assessment of Costs and Fees imposed by the Order of Abatement be waived.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Secretary Aherne stated we will hear from the Department first for seven minutes and then the Appellant. Then we will have discussion, and then there is a three-minute rebuttal for each side.

President Lee stated if we could hear from the Department representative first.

Anthony Amable, Plumbing and Boiler Mechanical Inspector for DBI, stated the original notice of violation was written by myself based on an actual physical inspection of the premise on April 19, 2004. At which time, we observed several code violations, which are delineated on the report. We issued letters, followed procedure, and some of these code violations are pretty significant health violations with back flow protection and boiler certification inspection and safety items on the boiler.

Mr. Amable said the owner of the property has had a significant amount of time to contact us. We have sent letters explaining what he needs to do, how to go about getting an appropriate contractor to help him with the work; and today, we have had no inspections, no response. I believe our recommendation is to uphold the Order of Abatement and impose assessment of costs. Thank you.

Vice President Walker stated this is a significant amount of time, what is going on for seven years? I mean, I guess I would ask how come it has taken so long to get to this point.

Inspector Amable stated I can only give you my response, which is beyond the scope of my expertise, other than if you look at the case history, we sent it to the Code Enforcement in 2004 from one Department somewhere in May. After it went to Code Enforcement, I cannot speak to what takes place up there and how come it took so long.

Vice President Walker stated ok, thank you.

President Lee asked has anybody gone back to visit the property since 2004?

Inspector Amable stated no, we have a response that says there were plumbing permits which we required be pulled, but plumbing permit in its description and scope mentions nothing about the removal of the boiler, for which we require a permit and inspection, and that particular permit had no case history of any inspections being done.

Vice President Walker asked so it is inactive?

Inspector Amable stated it is long since expired.

Vice President Walker asked what led to the 2004 inspection?

Inspector Amable stated probably the City had some records either from the Back Flow Department, from the Health Department, or we had records to indicate there was a boiler on the premises, and it did not have a valid or current permit to operate. At which time, when I was first hired on, that is primarily what I did was to go out and inspect various boiler rooms to see if they complied and if they did not comply to write the notice of violation.

President Lee asked is there usually routine inspections of boilers?

Inspector Amable stated the actual requirements to have a routine inspection and a permit to operate is the responsibility of the property owner, and it is up to them to hire a licensed C-4 contractor. They do the physical inspections, submit the report to our Department, and we issue the permits to operate but as far as enforcement goes, then that falls on our shoulders to do enforcement.

President Lee asked if the Commissioner's had questions? Ok, to the comment. Appellant, you have seven minutes.

Stephen Hou, son of the owner, stated a lot has transpired. In 2004, when we got the notice, I think it was late 2004 or 2005, the apartment caught fire, so there was fire damage, and everyone was out of the building for several years.

Mr. Hou said at that time, when we remodeled or had to rebuild the whole thing, we demolished the fire damage and everything else, they demolished the boiler as well at that time back in 2005 and it did not exist. I told one inspector when we first got the notice that it is not operational right now. I cannot give a permit inspection because the building is not occupied. No one is using it. There was no usage of the boiler at all because it was unoccupied. Since then, my dad was in charge and passed away, then my brother has passed away, so a lot has transpired since then.

Mr. Hou stated we just barely got the building back online now but the boiler was removed back in 2005. I talked to the inspector when I called them up, and he said to send an e-mail, and I did and did not hear a response, so when I got the first court date, I said that the boiler was not there, and I talked to the inspector, and he said I just had to send in some information saying the thing was gone, so I assumed I did not have to show up for this one and now I got this one. The boiler is not there. Nobody bothered to call me up to get an inspection to see if it was there or not. It has not been there for five or six years. I do not have a boiler there. There is nothing to abate, it has been gone.

Vice President Walker stated the Department does not have any record that there was any

inspection of whatever the permit for the Plumbing was at that time. My question is if you have done a rebuilt after the fire, what is the current heating source?

Mr. Stephen Hou stated it is a water heater.

Vice President Walker stated ok.

President Lee stated any other questions, Commissioners?

Commissioner Murphy stated Deputy Director Sweeney, explain a bit more to me what is going on.

Vice President Walker stated that comes as rebuttal.

President Lee stated we will go to the Appellant first and then we will talk to the Department again. Any other questions for the Appellant? I have a question. My understanding is that there was a fire and you rebuilt the building, changed the heating system.

Mr. Stephen Hou stated the fire next door and it took part of our roof off and everything. The place was vacated.

President Lee stated you must had permits to...

Mr. Stephen Hou stated we had a demo permit and building permit and have design, planning and went through everything.

Vice President Walker asked what is the current heating system because the boiler was a heating system, an electric? The Appellant stated yes.

President Lee asked that was indicated in your construction project?

Vice President Walker stated that is permitted? The Appellant stated yes, I think so.

Commissioner Clinch asked a similar question, was the boiler for domestic hot water supply or was it heat as well? Stephen Hou stated it was both. Since that was the case, when we had the fire, we just demo the whole thing.

Commissioner Clinch stated when you did the rebuild after the fire, the heating system was installed and a domestic hot water supply system was installed that was part of the building permit? At the time, there was no reminder of an outstanding violation?

The Appellant stated no, because there was no violation. I told one of the inspectors back then that the boiler was put down and removed. I did not realize that I had a violation at that time. There was no violation because the boiler is not there anymore. How do you get fined for something that the trouble is not there? I mean, the boiler is gone.

Commissioner Mar stated because the apartment building was vacant after the fire and because it was reoccupied, was there a final inspection, and was that passed before occupancy took place? It is not occupied now? The Appellant stated I have finals coming up pretty soon.

Commissioner Mar stated the construction is still going on? The Appellant stated yes, had a lot of family issues when my father and brother passed away.

Commissioner Mar asked it has been vacant since 2005? The Appellant stated yes.

President Lee stated so the construction permit has not been completed yet? The Appellant stated no, I still have the permit out on it.

President Lee stated no more questions, Commissioners? Any public comment? Ok, no public comment. Could we have the Department back up for rebuttal?

Inspector Amable stated he certainly understands the Appellant's frustration. It is a simple matter, and we made this clear through our communication. You can remove a boiler, but you need a permit to remove a boiler. We will do the physical inspection to make sure the cross connection has been eliminated and the gas lines are properly secured, and we will abate the complaint as simple as that.

Inspector Amable said going beyond that, to install a new source of heat, particularly gas heaters because that is our purview. Gas heater and water heaters, we need additional permits for the new equipments. As of date, I have no permit indicating that they are installing any of those equipments. I have no inspection history of any physical inspection for any plumbing or heating pertinent devices for this property. All I have is a permit here that says replaced waste pipe damage from fire and there is no permit history on that permit and is long since expired.

Vice President Walker stated so if I go to the online side and look at the history, there will be no permit for either a new heating system or a removal of the old one?

Inspector Amable stated based on the staff report that was given to me and presented here today, that is my understanding. There is no history of any permits for any of this work. There may be some misunderstanding. The Appellant might have been under the belief that his job card covered this work, but it is clearly indicated on the job card that separate plumbing permits are required.

Vice President Walker stated thank you.

President Lee asked Mr. Hou, did you have anything else to add? Stephen Hou stated I did not mean it like that but I had to go up to the Building Department and renew my existing building permit to get the parking passes that I had. I know I did that, and I paid them something, so I do not know what that is. They looked up the files and said that they updated the permits, and I supposedly paid the fees on it to get my parking permit and everything. I do not know what I can say. If I need to pull some more permits out for the plumbing permits, then I will have to do that.

Mr. Stephen Hou stated I thought that was included. I thought that was in the original building permit.

Commissioner Murphy asked are you a general contractor? The Appellant stated yes, I am.

Commissioner Murphy stated I think a general contractor should know to pull separate permits.

Mr. Stephen Hou stated I am an electrical contractor and have a general license. I do not act as a general very often and I am not a general contractor. I have the license, but I do not utilize it as my source of income. I am more of an electrical contractor. I thought it was included since they pulled the permit for the whole building.

Vice President Walker asked do you have a contractor on this job? The Appellant stated no, I am just doing it myself and that is why it is taking so long.

Commissioner Mar stated I think he answered the questions from the two previous Commissioners. Thank you.

President Lee stated thank you Commissioners.

Vice President Walker stated it seems pretty clear from the presentation that the permits necessary for the work done were not drawn and I understand the frustration, but I think that it is our job to actually support the proper process of getting permits, and when that does not happen, that is why we get here.

Vice President Walker said maybe what the BIC could do is figure out the time necessary for actually taking the permits out and doing the work. I support the staff's recommendation in this, so maybe we could figure out a timeframe of enacting it or implementing it like we do sometimes. Do you have a sense of what it would take to implement and correct this problem?

Inspector Amable stated he thinks at this point, at the very least, we need to get the appropriate permits pulled, and we probably need to do a cursory initial inspection to see to what extent the work has proceeded without a permit. We do not know how much work has been done up to this point without permits and knowing that he is an electrical contractor, he is clearly aware that electrical permits are separate from job cards, so there could be a significant amount of work that has already been done that has not been seen, that has not been permitted. He could pull a permit online in a day. I would not give him more than 15 days to pull a permit and get us out there to see what is going on.

Attorney Gessner stated the notice of violation in front of you right now and pertains to the previous boiler so I believe to abate that violation. What he needs to do is to pull a permit for the removal of the boiler that already occurred. For the new system, that is not really before you at this time.

Vice President Walker stated ok.

Commissioner Murphy stated they would need to pull a permit for that particular boiler only and get that abated?

Attorney Gessner stated for the removal of the boiler that already occurred.

Commissioner Murphy stated he should get that abated and it is for the removal of the boiler which already occurred without a permit.

Vice President Walker made a motion, seconded by Commissioner Murphy that we uphold the staff's recommendation, uphold the abatement and give him 30 days to resolve this issue.

Attorney Gessner stated the motion is for a 30-day advisement to abate this violation. If it is not completed within 30 days, the Order of Abatement will be recorded, and assessment of cost withheld.

Vice President Walker stated ok, well said.

President Lee asked do we have a second? I guess Commissioner Murphy seconded.

Secretary Aherne stated we will take a roll call vote. The Commissioners voted on follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>

The motion carried unanimously.

President Lee stated you have one month to get your permit and get it resolved.

D. CONTINUED APPEAL: Order of Abatement

3. CASE NO. 6733: 5 Seymour Street

Owner of Record and Appellant: Margaret D. Nelson, 5 Seymour Street, San Francisco, CA 94115

4. Owner of Record and Appellant: Winston W. Montgomery, 5 Seymour Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: Needs more time to finalize the permit.

Note: The AAB first heard this matter on May 19, 2010, and held a continued hearing on November 17, 2010. Continued for hearing today.

Testimony, deliberation and possible action to affirm or reverse the Notice of Violation and/or to impose, or modify the terms and conditions of the proposed Order of Abatement.

Secretary Aherne stated we will allow three minutes for each side for the updates. Do we have someone from the Department first?

President Lee stated yes, could the Department please come forward and give us a brief update of what is happening?

John Hinchion, Acting Senior Building Inspector of Code Enforcement at DBI, stated the address 5 Seymour Street, Appeal Case 6733, as was mentioned, this case was previously heard on November 17, 2010, continued to today. The violation, dormer type roof constructed of a north elevation without a permit.

First and second notices of violation were issued on December 3rd of 2009, an Order of Abatement was issued with conditions 30-days to file permit application to legalize or remove dormer roof, plan review time limit, 10 days to pick up approved permit and 30-days to complete with final approval. There was a permit issued and filed in June 12, 2008, that was Permit Application No. 2008-0612-4326 and since our last appeal hearing, that permit was issued on January 27th of this year. Because of all the staff time we have invested in the case, we would still hope that you would uphold the Order of Abatement and impose the assessment of costs. That is our report.

President Lee asked any questions? No questions from Commissioners? Ok, the Appellant.

Mr. Winston Montgomery, Appellant and owner with his wife, stated the good news is that we have been issued the permit. It has been my contention all along that the assessment of costs is unfair because I have made what I believe to be a reasonable and appropriate progress to get this permit.

Mr. Montgomery said as Inspector Hinchion said, he first applied for it in June of 2008, and I have sort of a timeline here. It has been a long time, but I think the process is so slow that that is really how long it takes. I was issued the first notice of violation on February, 2008 and the second notice on June, 2008. I filed for the permit that same month on the 12th and so the notice of abatement costs came after I had filed for the permit so that is why I think it is unfair that the notice was given to me while I already had a permit filed.

Commissioner Murphy asked when you file for the permit, do you have to have a plan drawn

up and submitted to Planning? The Appellant stated certainly. I went through the whole process. Since it is an old house, I had to go through the Planning Department and get a historical review. I had to answer two letters of requirements from Planning. Then, I was passed to Planning and then my neighbors applied for a DR design review to oppose that the Planning Commission's permission that was settled finally in September of 2010. It went back to the Building Department and was finally issued in January 27th of this year.

Mr. Montgomery said as soon as the rain stops, I will correct the problems I have. I have already paid and this is related to a neighborhood disagreement. I have already paid \$1,000 costs for a related issue. We share an alley, and I cannot get in that alley without their permission to take care of another violation, so I paid that just because there was no way I could correct it, but again, my contention is that I tried to get my permit to correct the violations, and it was primarily the slow process of the City which kept me from accomplishing that.

President Lee stated Commissioners, anymore questions?

Vice President Walker asked this flow essentially from the initial work without permit? Just to be clear? The Appellant stated yes, it was 25 years ago, but, certainly, you are right. It did flow from that point.

President Lee stated ok, thank you. No other questions? We will take public comment. No public comment? Ok, we will go back to the Department for a quick rebuttal. There is no rebuttal. Ok, Commissioners?

Vice President Walker stated very happy that this is coming to a resolution. I am sure all parties involved are. My sense is that the initial violation, as I sort of pointed out, stems from work without a permit. I think that is fair there may be penalties should not accrue on this, but it seems that the initial abatement proceedings or the initial violation was because the work was done without a permit that needs to be resolved, I would make a motion to uphold the abatement and maybe again allow time to effectuate the permit and support the staff's recommendation and move it forward.

President Lee asked what is the length of the permit? How long is it?

Inspector Hinchion stated general permits are a year at least, but normally when there is a Code Enforcement case, the timeline is set by the Code Enforcement process. Even though the permit might have a normal three-year life span, our process, because there are violations involved, could dictate that it would be done in a shorter period of time.

Commissioner Murphy asked what are the fines up to date that he applied for the permit to Planning?

Inspector Hinchion stated the initial fee at this point is \$1,050.

Commissioner Murphy asked some of that have come after that date?

Vice President Walker asked some of the penalties?

Inspector Hinchion stated there are no penalties that we would assess. We would simply assess whatever time we invested in the case, though there will be more time since then for the preparation of the Order of Abatement and the posting, but as for now, \$1,050 is the initial fee.

Commissioner Murphy asked why would time be spent on it if staff knew that he had already filed for the permit?

Inspector Hinchion stated if you look at the timeline here, the first notice of violation was issued on February of 2008 and no action was taken whatsoever by the owner. A second notice was issued on June 4th of 2008, and it was only then after the second notice that the permit was filed a few days later on June 12th. Because they filed that permit, we stopped the Code Enforcement process, to give them a chance to get that permit issued and no further progress took place. Then, it was a result of that lack of action that we scheduled a hearing for December 3, 2009.

Inspector Hinchion said it was since then, as we went through this process that finally the permit was issued on January 27th. If we did not schedule this case for a hearing, maybe the permit may not have been issued. It may have originally been filed just to stop our process and that is just my speculation.

Inspector Hinchion stated clearly, this shows that through our Code Enforcement process, no action was taken and you go to the next step. Another action is taken and now we are at least at the point where the permit is issued. Hopefully, now that it is issued, the work will get done and we will have a final sign off. Sometimes a permit can be issued and it may just lay dormant without any work being done and it can expire. I would hope that would not happen here.

Commissioner Murphy stated I understand. I do have a question for the Appellant. Did Planning approve the dormer as it is? I have seen pictures the last time.

The Appellant stated there are two windows we have to change. We have to remove one and change another and bring it back 6 feet from the front of the house. There are changes that have to be done.

Commissioner Murphy stated my second question is, how long is it going to take for you to get this finished, get it cleared up and signed off?

The Appellant stated well, it is not a very big job, frankly. It may be three weeks of work. It just depends. I am going to do it and I am hopefully going to do it in June.

Commissioner Murphy stated I am asking you how much time you need to do it. I do not want to be back here three months from now talking about the same dormer.

The Appellant stated well, if I can have three months, I do not know who is available. If I could have a rebuttal, I do not understand. I am willing to pay the assessment of costs and then go back into the pool where I have the regular permit process where I have a year to complete it. I

am not going to take a year and I want this off my plate, too. But I do not see why we keep putting limits on my work beyond the normal process. I could see it up to this point, because I was appealing that assessment of cost. If you find that I should pay those costs, I am expecting or hoping that I will pay those costs and then I will have a typical permit with a year to get the work done.

The Appellant said he did not agree with Mr. Hinchion. I can see the notice of violations as warnings to do the work. If the permit expires, the permit expires. He is looking over my back to prod me on. I do not understand the way he represented his role.

The Appellant stated in the Order of Abatement, it said the Director hereby orders the owner of said building to comply with the following: 30 days to file a permit which I already had filed and this is done in December so I filed in June. It also says comply with plan review and time limit of 10 days to pick up the permit, 30 days to complete all work including final inspection. All of that is impossible to me.

Commissioner Murphy stated he has to represent the Code Enforcement.

The Appellant stated I can see his role all the way up to the point where I have my permit then I am within the codes. I will certainly submit to whatever you want me to do.

Commissioner Murphy stated I am trying to help you here and giving you some time and you are telling me that you want to drag it on for a year?

The Appellant stated no, that is not what I am doing. What I am saying that this permit gives me a year to complete the work and that is how I understood it. I am not a licensed contractor and I do not think it is fair to be limited to three months.

Vice President Walker stated because you are here before us and it is our job to make a decision about what to do with this case, I move that we uphold the staff decision and give him 90 days to implement or execute the permit and then hold it, get the legal language.

Commissioner Murphy stated get it signed off.

Attorney Gessner stated complete all work including final inspection. The Order of Abatement that you are reviewing originally gives a 30 days to complete all work and obtain a final inspection after obtaining the permit. So you would be providing 90 days from today's date.

Vice President Walker stated correct.

Commissioner Murphy stated ok, I will second that motion.

Attorney Gessner stated the motion is to uphold assessment of costs that were imposed up until the time that the permit was applied for?

President Lee stated so let's get it straight. 90 days from today? You would be providing 90 days from today's date.

Vice President Walker stated yes.

President Lee stated 90 days from today.

The Appellant stated yes. I mean, there has to be some process that is consistent. I do not see that this is, but I won't go into it. Thank you very much and I will complete the work in 90 days.

Vice President Walker stated do we have a second on that? **Commissioner Murphy** seconded.

Attorney Gessner stated Commissioners, just a clarification on motion of cost. I believe the Department stated they were \$1,050 as of the date the permit was applied for, but there are additional costs since that time and I am not sure about the motion.

Vice President Walker asked can I get clear on the additional costs? I would initially try and go back to that amount. It is significant.

Inspector Hinchion stated my understanding is that before you today is to uphold the Order of Abatement and to approve the assessment of cost that has been assessed to the date of the hearing. Any other costs since then I would assume would be dealt with when we do our final fees. My understanding is it would not be under this.

Vice President Walker stated the cost assessed to this date is \$1,050.

President Lee stated I will allow one minute.

The Appellant stated it is just that the assessment of cost issues in any fine or any assessment of costs is some accounting as to what the costs are for, hours spent, people spent, and there is nothing in this case. If I am going to pay \$1,000 or more, I would like to know for what I am paying. I think it is only fair. Thank you.

Inspector Hinchion stated we would be happy to give him a breakdown of any of those costs.

Vice President Walker stated thank you.

President Lee stated we are back to the original motion of 90 days and assessment of cost.

Secretary Aherne stated we will take a roll call vote. The Commissioners voted on follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>

The motion carried unanimously.

E. PUBLIC COMMENT

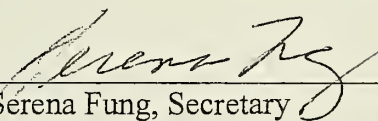
Secretary Aherne asked if there was any general public comment relating to the Abatement Appeals Board? Seeing none, we can move to adjournment.

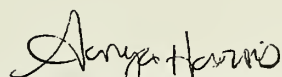
F. ADJOURNMENT

Vice President Walker made a motion, seconded by Commissioner Murphy that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 9:49 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, September 21, 2011 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

GOVERNMENT
DOCUMENTS DEPT

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6750: 619 Diamond Street

Owner of Record and Appellant: Lindsay Chambers for Ra Pacific LLC, 619 Diamond Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Reverse the Order of Abatement due to active building, plumbing and electrical permits on 619 Diamond Street that correct the building violations caused by the previous owner in 2008. The new owner purchased the home in late 2009, and it has been under continuous construction (with inspections conducted from 2010 to present. The communications from the permit section in the Building department were that the active permits took care of the NOV's once completed.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6751: 250 Kearny Street

MEMBERS OF THE BOARD	DEPARTMENT REPRESENTATIVES
Frank Lee, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272
Debra Walker, Vice President	Sonya Harris, BIC Secretary (415) 558-6126
Kevin Clinch, Commissioner	Teresita Sulit, Secretary (415) 558-6012
Reuben Hechanova, Commissioner	
Warren Mar, Commissioner	
Mel Murphy, Commissioner	CITY ATTORNEY'S OFFICE REPRESENTATIVE
Criss Romero, Commissioner	Francesca Gessner, Deputy City Attorney (415) 554-4762

Owner of Record and Appellant: Henry Karnilowicz for Occidental Express, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The majority of permits have been issued to comply with the order, however the work cannot be completed within the six months' time frame, and therefore one year is requested. The building permit has not yet been signed off by Planning because there is a Planning Enforcement Notification regarding Complaint ID#10375. This enforcement notice is for the facade of the ground floor commercial space. Although the hotel is separate from the commercial space on the ground floor, the Planning Department will not release any permits until such as the Enforcement case has been abated.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

3. CASE NO. 6747: 1117 Geary Boulevard

Owner of Record and Appellant: Emeric-Goodman Associates, POB 2210, San Francisco, CA 94126

ACTION REQUESTED BY APPELLANT: I. Appellant requested that the Order of Abatement be reversed and Assessment of Costs be waived.

II. Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

D. PUBLIC COMMENT

E. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6126** or the **Secretary, Teresita Sulit at (415) 558-6012** at least 72 hours in advance of the meeting to request for these services.

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POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

Abatement Appeals Board - 1660 Mission Street, 3rd Floor - San Francisco, CA 94103-2414

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, July 18, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES (CONTINUED): Discussion and possible action to adopt the minutes for the meetings held on April 18, 2012 and May 16, 2012.

D. CONTINUED APPEALS: Order(s) of Abatement.

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

Attorney for the Owner: Heather Wolnick, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd Floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

On **November 16, 2011**, the AAB voted to continue the case for 90 days to allow parties additional time to resolve the matter.

On **February 15, 2012**, the AAB voted to continue the case for three months to allow additional time for resolution of appellant's forthcoming scheduled binding arbitration proceeding.

MEMBERS OF THE BOARD

Kevin Clinch, President

Myrna Melgar, Vice President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

DEPARTMENT REPRESENTATIVES

Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142

Sonya Harris, BIC Secretary

(415) 558-6164

Teresita Sulit, Recording Secretary

(415) 558-6267

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney

(415) 554-4634

On May 16, 2012, the AAB continued the matter for sixty days.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6760: 1654 Haight Street

Owner of Record and Appellant: Romine, Ronald B., P. O. Box 22933, San Francisco, CA 94129

Agent for the Appellant: Leo McFadden, 1459 – 32nd Avenue, San Francisco, CA 94122

ACTION REQUESTED BY APPELLANT: Appellant has requested additional time to complete the work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6761: 1299 Arguello Blvd.

Owner of Record and Appellant: Sam Hom, et al, 1299 Arguello Blvd., #2, San Francisco, CA 94122

Architect for the Appellant: Van T. Ly & Associates, Architecture, Planning, 8 Brussels Street, San Francisco, CA 94134

ACTION REQUESTED BY APPELLANT: The appellant is requesting more time to have architect file the required permit.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

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Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, September 21, 2011 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED February 15, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for September 21, 2011 was called to order at 9:00 a.m. by President Lee. Roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Criss Romero, Commissioner
Mel Murphy, Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
John Hinchion, Acting Senior Building Inspector
Rosemary Bosque, Chief Housing Inspector
Teresita Sulit, Secretary

Catharine Barnes, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. NEW APPEALS: Order(s) of Abatement

1. CASE NO. 6750: 619 Diamond Street

**GOVERNMENT
DOCUMENTS DEPT**

FEB 27 2012

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Owner of Record and Appellant: Lindsay Chambers for Ra Pacific LLC, 619 Diamond Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Reverse the Order of Abatement due to active building, plumbing and electrical permits on 619 Diamond Street that correct the building violations caused by the previous owner in 2008. The new owner purchased the home in late 2009, and it has been under continuous construction (with inspections conducted from 2010 to present). The communications from the Permit Section in the Building Department were that the active permits took care of the NOVs once completed.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Secretary Harris stated we will hear from the Department first for seven minutes and then the Appellant. Then we will have discussion, and then there is a three-minute rebuttal for each side.

President Lee stated thank you. I guess we will hear from the Department first.

John Hinchion, Acting Senior Building Inspector, Code Enforcement, stated the Appeal #6750, 619 Diamond Street, Complaint #200840567. In your package, you will see the dates for first and second notice of violations. The particular violation in this case is remove all walls and ceiling finishes of the entire building interior without a permit.

On March 24th of this year, a Director's Hearing took place and an Order of Abatement was issued with conditions including file for building permit for removal of interior finishes and submit corrected plans for work from beyond the scope of Permit Application #200804119483 and finally 90 days to complete all work and final inspection for approval.

There were two permits issued in 2008. One was to deal partially with a notice of violation, a separate case from the one we heard today. Shortly after that, there was a revision to that permit and all those permits expired. Earlier this year, those two permits were renewed, but they have not had those permits renewed, but they have not had final inspection yet.

A permit was filed in September of this year, a revision to the original permit. That permit is still in filing status and has not been issued, so take into consideration that no permits dealing with the violations were issued, inspected, and signed off before the Hearing and has not happened to date. Staff recommends to uphold the Order of Abatement and to impose assessment of costs, and that concludes our report.

President Lee asked any questions?

Commissioner Murphy stated I have just one question. These walls that were removed are they all interior? Inspector Hinchion stated yes, all interior walls.

Commissioner Murphy stated I understand the September permit application is for the extra work that was not included in the first two permits?

Inspector Hinchion stated it is for extra work of different types, but it does not refer to language in the violation which relates to removal of the interior wall finishes. Still, there is no specific reference to a particular violation.

President Lee stated so the violation, the permit application submitted for September, that is all for violations? Will that solve the violations?

Inspector Hinchion stated not completely, no.

President Lee stated so it is different? Inspector Hinchion stated yes.

Commissioner Murphy stated of these interior walls, were any of them structural and/or would have required to be upgraded to meet current structural requirements?

Inspector Hinchion stated whenever there is work done without a permit and any material is removed, until you get the permits and have inspections going on, it is only then that you truly get a clearer picture of exactly what went on.

Inspector Hinchion said often a permit can be gotten, and then after the first inspection, when the inspector corresponds between the violation and the description on the permit, they may discover that it does not entirely deal with all the issues, or they may discover all other issues that were not apparent when the initial notice of violation was issued, so that is what this whole process is about. We need a permit that deals specifically with it and then under the inspections with that permit and any other issues that can be dealt with.

President Lee stated thank you and asked if any of the Commissioners had questions? No, ok, we will have the Appellant, the homeowner. You have seven minutes.

Lindsay Chambers, Appellant, stated actually I am the homeowner of the property. I guess a question I have is that I have a permit here from 2009 that says clear NOV's with BID. It was a revision permit in 2008 permit that was pulled by the previous owner and that is what I have. This is a printout from online and this is the actual permit.

President Lee stated thank you. Yes, please continue.

The Appellant stated the main point of contention is that I do not have a permit that directly explicitly states that this permit is to clear the notice of violation, but that permit explicitly states that its intent is it is supposed to be able to be clear once it has been cleared, which we do not have a final because we have not completed construction, that the NOV's will be cleared once that permit is final.

Commissioner Murphy asked did the seller disclose this to you when they sold you the building?

The Appellant stated I was aware there were NOV's on the property. When I first checked with the Building Department, this my first time building in San Francisco, they said those NOV's cannot be cleared until the permit was final but this revision permit, when this particular one I have handed you, is final then the NOV's would be cleared.

Ed Sweeney, Deputy Director, stated that has not been final? I am aware that the prior owner is well known to the Building Department. He went through bankruptcy and left a number of these properties all in the same condition and a lot of notice of violations. It was a very complex case. The District Attorney has a case against the former owner. He must have had 20 of these properties throughout San Francisco, and this is just another one we had. You have investors now picking up the pieces to this property and they are getting permits and they are doing the right thing but they are still being whacked as for past deeds for someone that owned the property prior to them. That is probably the best way to put it.

Commissioner Murphy stated let me ask you a question, Mr. Sweeney. What does this woman need to do to resolve this?

Mr. Sweeney stated I believe she is pretty close to finalizing this. She probably needs a little more time. She would finally get the CFC and that would clear all the violations.

The Appellant stated my contractor said he should be done by November 1st.

Vice President Walker stated what is the current fees on this? Mr. Sweeney stated that John Hinchion would be better off on that.

The Appellant stated does anyone have any questions for me? Otherwise, I do not have any testimony. Thank you.

President Lee stated ok, do we have public comment? No, ok, rebuttal?

Inspector Hinchion stated in response to that question, the initial fee at this time as \$1,326.

Commissioner Murphy stated has Electrical signed off or Plumbing?

Inspector Hinchion stated I am not aware of that. The history here seems to be of not getting permits signed off and there was reference made to other permits issued. There can be permits issued, but the goal is to get the permits signed off. Because in doing so, we can verify that the permits of the violations, and then we can close the case.

Commissioner Murphy stated I just wonder why this ended up here in front of us.

Inspector Hinchion stated well, as the secretary mentioned, there was a change of ownership, and it is difficult when a new owner comes in because they are not familiar with exactly what went down, so they depend on their own research and any help we can give them. I do acknowledge that it is difficult.

Vice President Walker stated so the \$1,326 represents fees only, no penalties?

Inspector Hinchion stated that is the cost that we incurred in handling this case at this point.

President Lee stated anything else, Commissioners? Thank you. Homeowner, rebuttal?

The Appellant stated this is in response to whether there are active electrical and plumbing contracts on the property. My contractor asked the plumbing and electrician to pull their own permits, I apologize, I only have what I pulled off the online website, but there was the midpoint inspection this year for Plumbing and Electrical as well as the insertion of a fireplace but they have not been final because the house has not been completed and we have not had final inspection. Thank you.

Mr. Sweeney stated Commissioners, it would appear all the rough inspections have been done on the property and we are awaiting final.

President Lee stated ok, any more questions? Ok.

Vice President Walker stated so it is always troubling to me when, you know, in the midst of a house selling that had previous problems those issues have not been shared with the new purchaser and I think that is an ongoing problem. However, it does not deal with the fact of the violations here, which is what we are asked to look at. It looks to me like the Department's recommendation is an accurate one and that I would recommend or suggest or make a motion that we forward the staff approval that we adopted the recommendation of the staff but give some time to the owner to complete the work, maybe 30 to 60 days, two months to uphold the staff's recommendation and give the homeowner two months to complete the work.

Commissioner Murphy stated I would like to add to that. I would like the owner to at least get 90 days.

Vice President Walker stated ok, I am fine with that.

President Lee stated I think I will agree with 90 days. I think the homeowner said something about November.

Vice President Walker stated I am happy to amend my motion. Is there a second?

Commissioner Murphy stated seconded.

President Lee asked any other comments, Commissioners?

Commissioner Murphy stated I do. I think as a result of some of the condition of sale on some of this distressed property that we always will and most likely should at least be aware of what these properties have by virtue of their essentially a land mine for those that purchased it.

Commissioner Murphy said somehow, the realtors are just in there to sell the property without

the recognition that the impact on the buyer does have some repercussions. Do we have and should we take into account that these properties are and put the new owners at risk?

Mr. Sweeney stated in the case of how this particular former owner he had bankruptcy problems and had legal problems, he really did leave behind a mess. I have met with many people buying these properties, and all having the same problems as Ms. Chambers. It is very complex.

Mr. Sweeney said when you buy it from bankruptcy, you buy from a bank. The disclosures are not as much as you would have as on a regular sale. The buyer is at a lot more disadvantaged than your regular buyer. You need to be very sophisticated to buy property out of bankruptcy, especially one in bankruptcy that has been torn apart and has notices of violation.

President Lee stated you mentioned something interesting. Did you meet with the property owners or the new owners before they owned the property or after?

Mr. Sweeney stated unfortunately, I usually meet with them after. A couple of them I have met with prior to buying, and I tell them as soon as I hear this particular name "to watch yourself because you will probably discover all kinds of unpleasant things."

Commissioner Murphy stated when you take on one of these projects the properties are usually discounted, so you take that into effect. You also take into effect that you take the baggage when you sign on the dotted line. Whatever is on there, you are responsible for and I think the buyer in this case has shown very good faith in coming forward to getting permits and doing all she can to legalize it. We have given her time so that is where we are at.

President Lee stated ok, if there are no more comments, we will take a vote.

Commissioner Walker made a motion, seconded by Commissioner Hechanova to uphold the staff's decision with the amendment to give the owner an additional 90 days to complete the work.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion carried unanimously.

President Lee stated thank you. Next case, please.

2. CASE NO. 6751: 250 Kearny Street

Owner of Record and Appellant: Henry Karnilowicz for Occidental Express, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The majority of permits have been issued to comply with the Order; however, the work cannot be completed within the six months' time frame, and therefore one year is requested. The building permit has not yet been signed off by Planning because there is a Planning Enforcement Notification regarding Complaint ID #10375. This enforcement notice is for the façade of the ground floor commercial space. Although the hotel is separate from the commercial space on the ground floor, the Planning Department will not release any permits until such as the enforcement case has been abated.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

President Lee stated ok, the Department, please.

Inspector Hinchion stated Appeal #6751, 250 Kearny Street, Complaint #201063345. First and second notices of violations were issued. The violation in this case, unsafe building conditions include holes in fire rated walls and ceilings. As a result of the Director's Hearing March 10th of this year, an Order of Abatement was issued subject to conditions, file for building permit and 180 days to complete all work including final inspection approval.

There were numerous permits issued. The most recent permit this year has a large scope of work and that permit is only at the filings status, if the permit was issued and all the work completed and signed off, it would deal with the violation. Taken into consideration that that has not happened, staff recommends to uphold the Order of Abatement and impose assessment of costs.

Commissioner Murphy stated you said something there about the façade of the commercial being altered. What is that all about?

Inspector Hinchion stated is that a permit you are referring to?

Commissioner Murphy stated I am referring to work that has been done. Has the façade been altered?

Mr. Sweeney stated no, just for your information, this is a City Attorney case. It has been in our office for some time. I believe there is a change of ownership in recent months, and they seemed to be getting permits.

Vice President Walker stated so it is the permitting and the work subsequent to, I mean, what is being requested here is to add more time onto this, I believe, another six months in order to accomplish the work. My question is how come the work has not been done? Is that just the ownership issue?

Inspector Hinchion stated only the property owner can answer that question.

President Lee stated maybe we can just wait for that honor. Are there any other questions? Does the Department want to continue?

Rosemary Bosque, Chief Housing Inspector stated this is a City Attorney case. It is a residential hotel of 145 guest rooms, 137 are residential and 8 are tourists. This has a thirty-page notice of violation, one of the 1930's buildings we have ever seen. That notice of violation was issued last September, and the property owner hired a property manager, Sam Patel, and others to clean up this building, and they had since then undertaken a huge remodel of this building from top to bottom.

Inspector Bosque said it does not have that have many individuals in it and a substantial amount of progress has been made, including within the rooms that are occupied. They have even gone as far because there was a bed bug infestation to create a heat room in this building to be able to assist the occupants to treat their personal belongings as they then move them to newly rehabilitated rooms within the building. So a lot of work is ongoing within this property.

Vice President Walker stated could I ask a question about the request is for an extension of six months, and the staff's recommendation seems to be consistent. I mean, when I read this, it says okay to extend time to coincide with the expiration of the permit.

Inspector Bosque stated with respect to the fact that this is a case within the Code Enforcement Section, I would definitely defer to the wisdom of Inspector Hinchion on that, but it does seem to be keeping with the scale of the work that has been going on in the building. It is a very large scale that been taking up permits. It is my understanding that one of the issues when we did our joint inspection last September, which I was at that inspection as well, was that they had never completed the permit to do the seismic work that was done in the building, and that I understand is being resolved too. The scale is very large and six months I think would be reasonable, given that scale.

President Lee stated any question from the Department? None, the Appellant please.

Mr. Bob Noelke stated I am representing the Appellant here. Mr. Karnilowicz could not be here today, I am sorry about that. Permit application #2011-0701-9385 was issued yesterday. The fees were paid, \$17,000 in permit fees for \$680,000 for work to comply with two notices of violation.

Notice of Violations #200005134 and 201061908 and it deals with reconfiguring the buildings and reconfiguring the rooms and bringing the building essentially up to code. The thing is the permit is for a year, that permit is for 12-month period. We are asking beyond the six months period. We are asking for more time to coincide with the permit. Plumbing and Electrical permits are also on file, and there will be some other ones issued as well. If this could simply coincide with the permits or pretty close to it, I can understand that this building was a real problem. A number of permits, as you can see from your staff report, have been taken up, but

this latest one has been issued.

Commissioner Murphy stated how much time do you need to get the project finished?

Mr. Noelke, the Appellant's representative stated I think comfortably, a good 9 to 10 months and the life of the permit says 12. To get the sign-offs and so on, it does take time. There are a lot of issues here. Thank you so much.

Commissioner Murphy stated I have a question. How much or what percentage of work that had been completed to date and how much is left?

The Appellant's representative stated because I just became involved this morning, I do not have an answer for that. I think they have done a significant amount of work there so far based on Rosemary Bosque's testimony, but to what extent, I do not know. I can report to you and give you the information but I don't have it right now.

President Lee stated any other questions? Any public comments before we get rebuttals? Seeing none, can we have rebuttal from the Department.

Inspector Hinchion stated sometimes in these cases, a particular permit has got to deal specifically with the violation but it sounds like here the proposal is to do a major remodel of the building. When that work is done and signed off, that would automatically deal with the violation. Taking that into consideration, it is huge and multi-work proposed. We would have no issue with whatever timelines you decide today.

President Lee stated Appellant, do you have anything more to add?

The Appellant's representative stated we thank the Department.

Vice President Walker stated I would like to make a motion to uphold the Department's recommendation and extend the timeframe 180 more days to allow for the maximum time allowed under the permit, one year total.

Commissioner Murphy stated I will second that.

President Lee stated any discussion, Commissioners? I think it is appropriate. The Appellant seems to be moving along, and the Department seems to be agreeing with that assessment that the project is moving along, so I would agree.

Vice President Walker stated and one more thing, we have been at the Department in our Litigation Committee dealing with this project for a long time. I appreciate that the owner of the building is not only dealing with the violations but actually improving living conditions for people living in that building.

President Lee stated yes, that is another thing to consider. Working with actual occupancy is a difficult situation. We want to make sure everybody is still living or they are supposed to be,

that is always a timely element. Ok, call for vote, please.

Secretary Harris stated we have a roll call vote on the motion to uphold the Department's recommendation and to extend the timeframe for one year.

Vice President Walker stated to one year.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion passed unanimously.

3. CASE NO. 6747: 1117 Geary Boulevard

Owner of Record and Appellant: Emeric-Goodman Associates, P. O. Box 2210, San Francisco, CA 94126

ACTION REQUESTED BY APPELLANT: Appellant requested that the Order of Abatement be reversed and assessment of costs be waived. Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

President Lee stated ok, the Department first.

Inspector Hinchion stated Appeal #6747, 1117 Geary Boulevard, Complaint #201071348. The first and second notice of violation was issued. The violation in this case installed a deck 33 feet by 45 feet on the roof. A Director's Hearing took place on March 10th, an Order of Abatement issued with conditions to file for a building permit with plans to legalize or remove deck installed and that the final condition, 90 days to complete all work including final inspection approval.

There was a permit issued in 2008 for a commercial roof, that permit was signed off. So it is reasonable to conclude that there would have been no deck on that surface when that permit was signed off. Later this year, two permits were filed but have not been issued. Each of those permits, if any one of these were issued and inspector signed off, it would clear the violation. One was to legalize existing deck and a roof. The other was real installation of floating deck,

because they are not issued, staff recommends to uphold the Order of Abatement and impose assessment of costs.

Commissioner Murphy stated did this engineer's letter satisfy the Department to expand that light well on the deck?

Inspector Hinchion stated because there is no permit for the deck, the engineer's letter would be giving guidance to the owner on what type of permit to submit but the final outcome we are looking for is the relevant permit to be issued, inspected, and signed off.

Commissioner Murphy stated it is kind of hard to see in these aerial pictures. Was there a deck there originally?

Inspector Hinchion stated there may have been, and if there were, that would help them to get it replaced, but our issue is not whether there was or was not. Once the roofing permit was signed off, it is reasonable that there was no deck, there may be one previous, and maybe they put it back, thinking that was ok, but the material in the deck now is all new material, and that would require a permit.

President Lee stated what you are saying that when you closed out that roof permit, you visually inspected it, and there was no deck?

Inspector Hinchion stated the roofing permit generally does not require an inspection unless there is a placement of the plywood or framing at the roof.

President Lee stated ok, anything else, Commissioners?

Mr. Bob Noelke, representing the Appellant in this case, stated in response to Commissioner Murphy's question, there was a roof deck there. This deck that we are talking about today, what we call a floating deck and it is not really attached to the roof. It sits on top of the roof, and it is in a series of four by four panels that can be taken up for maintenance purposes when debris, etc., gets below a deck.

Mr. Noelke said it can be combustible, and it needs to be serviced and roof cleaned. It is kind of a floating deck, if you will. That is what is on the permit application that we filed to comply with a notice of violation but we were looking for permits that in the past that put this deck in. The problem is years ago, in your Property Conservation Division, which is the precursor of Code Enforcement when the Department was a bureau, issued a lengthy report in 1973, and that report included mentioned a drying platform, which is basically what this so-called deck is. It is really a drying platform. Deck is a misnomer in this case.

Mr. Noelke stated what happened was that it was part of an extensive property conservation division report and that was done with a permit and signed off in 1980. Well, the current owner of the building comes in shortly thereafter and does extensive rehab to the building and included what is not mentioned is the deck, this platform deck, which is really a floating deck.

Mr. Noelke said we come down to 2008 where a roofing permit was taken out. The owner acted in good faith, he took out a permit to replace the roof, and the deck had to be taken up. It was not secured in any permanent way. It is not really duckboards, but there is a ledger board along the perimeter and a little platform that sits on top of the existing roof. Then, we get into the fact that in 2008, the roofing permit was taken up and final.

Mr. Noelke stated in 2010, we have a complaint issued. The complaint was, apparently the residents of the building were having a party on this deck and they were creating a lot of trouble for the neighbors and a lot of noise. The neighbors were even concerned that they were climbing on the neighboring buildings because the buildings are right next to one another, they are very, very close.

Mr. Noelke said the Myrtle Street flats are actually the back of those buildings are in the same location as this property and they share a common property line. The complaint was made and a notice was issued, and that notice of violation cited only the fact that the building general section, that the building is unsafe and that a permit would be necessary for that deck.

Mr. Noelke stated to this end and that was done in October 10th of last year. Well, within less than 60 days in December, we have a Directors' Hearing. The owner was in touch with staff but never got a clear answer, so we had a Director's Hearing, which was then continued until January 13th of 2011 and we have a tape of that Director's Hearing; and on that tape, Neil Friedman was the Director's representative, and he indicated that the case should be returned to staff and that the Order of Abatement not be issued and it should be returned to staff.

Mr. Noelke said for some reason, the case went back to staff and the Order was issued. So what we are here about today is to say, first of all, that the notice of violation had defects. Secondly, the Order should not have been issued under the January 13th hearing. To that end also, we have filed a building permit application to comply with that notice of violation and a structural engineer's report has been prepared by the owner.

Mr. Noelke stated we filed that permit application and is currently on hold because the building is a landmark. It is a beautiful building and was built in the 1870's, I think, and it has a man-sharp roof and so on. It is right across from the old Jack Tower Hotel.

Mr. Noelke said we filed the permit and now the permit is we have to go before the Historic Commission because the building is a landmark; and if you have a notice of violation, you have to go before the full Historic Commission that is a hard and fast rule so we are in a catch-22 where we are in a difficult situation here. So what we wanted to do is to see if this Order could be reversed and we have the tape here if you want to hear it and so on and I am available for any questions.

Commissioner Murphy stated just one, actually, two questions. If you look at the picture right there, when you look through the skylight, what is below that skylight? Mr. Noelke stated a store front and this is on the second level.

Commissioner Murphy stated that is light for the store? Mr. Noelke stated the first level is 100% lot coverage, and then on the second level, the building is dense in the rear.

Commissioner Murphy stated my second question is do you have a picture of the deck? Mr. Noelke stated I have a picture here and I should have brought a better picture, but this was all I could bring. Can I bring this up to you?

Commissioner Murphy stated this deck that is on here right now was replaced by that one?

Mr. Noelke stated this is the current deck. Just to let you know, we also used the old boards that were there before the roof was done on 2008. We used the old board, simply turned them and fasten and put them back down. The deck is in 4x8 panels that you can pull up. It is what we call a floating deck.

Vice President Walker stated so we have seen some deck issues before us. If there is a non-conforming deck that is in existence, we have a grandfather, I mean, assuming it has not been built before a certain date, but when somebody rebuilt or uses new materials to rebuild it because it is deteriorating or whatever, if the non-conforming part does triggered a requirement of a Planning review if it takes up too much land use. So can you talk to me about what the requirements are when decks are non-conforming?

Mr. Sweeney stated on a situation like this, typically what we ask, after the notice of violation, we ask for proof that a deck was there. I have had conversations with the owner and some of the owner's consultants and I have asked them to give me proof that the deck was there and it is very sketchy.

Mr. Sweeney said these conservation reports, as we have heard in this Commission many a times, the 1960's and 1970's were sometimes they would give way and sometimes they were a little more restrictive. They are not always accurate. They do not always tell you if, in the 1960's and 1970's, it is important to realized that in San Francisco that we were having problems with the inner cities and there were funds coming in from Washington State and States to had rehab on a lot of these buildings, a lot of code violations were glossed over.

Mr. Sweeney stated now there is gentrification, and standards are higher and Code cycles have changed. Typically on a permit like this, when you are going to get a roof permit and you have a deck, you call out a deck because it is a structural permit or whether you call it a floating deck or a deck, it is a deck.

Mr. Sweeney said the code is quite clear. There is a number of things that you have to do if you are going to do a rebuilt. It is 100% rebuilt, so therefore it has to comply with the 2011 San Francisco Building Code, so that is what we were asking, notification, everything.

Commissioner Murphy stated notification and everything?

Mr. Sweeney stated the way we are looking at this, it is a brand-new deck. Many times I met with the consultants and owners that is what I told them to get a set of plans, come in, submit

plans and go through the motions and there is nothing I can do for them. There is no relief that I could possibly give on a brand new deck and finally they have come in with a deck, sounds like they might need a little more time.

Vice President Walker stated I would like to clear up this comment that the Director's Hearing indicated that it was not going to be an abatement that was not going to be issued, that it would go back to staff.

Commissioner Murphy stated do you want to go to the tape?

Vice President Walker stated I would not mind hearing the tape with you. So I just want the Department to talk about that one and I want to hear it.

Mr. Noelke stated Mr. Wofsy wanted to say something and I know our time is limited.

Vice President Walker stated I have been asking questions to staff, so go ahead.

President Lee stated use the microphone, please.

Mr. Alan Wofsy, President of Emeric-Goodman and Associates, stated I was personally at the hearing. My small firm was selected in 1978 to renovate this building by the San Francisco Redevelopment Agency. At that time, it was a City Landmark. It was also in the National Register of Historic Places. The reports that Mr. Sweeney was talking about as being sketchy were far from the case with this building because this building was in a fishbowl.

Mr. Wofsy said there were numerous steps we had to go through to satisfy both the City Landmarks and the State Historic Commission and the National Park Service. In any case, I was at two hearings on this matter, two Director's Hearings. First was in December, Mr. Sweeney was the Director and I was at the second hearing of January 13th when Mr. Friedman was the Hearing Examiner.

Mr. Wofsy stated unfortunately, they destroyed the tape of the December Hearing so I could not get a copy of that. That was important because we had testimony from our roofer. The January 13th tape I do have with me, and I am going to play that but I just want to give one slight additional prologue.

Mr. Wofsy said there were a number of hearings that Mr. Friedman officiated over and when he went to do an Order of Advisement and I have some of those, he was very explicit to give some 120 days, 30 days. Very explicit, so it is not an ambiguous situation and hopefully I will press the right buttons. Should I play it here or move it up closer?

Vice President Walker stated play it into the microphone. They will be able to hear it.

Mr. Wofsy said the tape of January 13th was unintelligible.

Commissioner Walker said to review the current information. It has to come back here, it will come back here but for now we will return it to staff. Thank you.

Mr. Wofsy asked what he should be doing? Be in touch.

Mr. Wofsy stated there is not a specific reference to the deck but it is for the Redevelopment Agency. You can see that there has always been a deck. The deck was renovated and every once in awhile, there is roofing work done and it's not an effective event. I could see if there were a complaint saying that someone just put a deck on there, but out of the blue, they said it was illegal.

That was a complaint on work without a permit and filed anonymously.

Well, there is no point in hearing any more of this right now, so we are returning it to staff and if there is further complication or for some reason it turns out the case is valid, it will come back here.

Vice President Walker stated so I have a question. It seems to me that there was not a determination at that Director's Hearing on this case, so this may be a premature move, my sense.

Mr. Sweeney stated Oh, I presided over the first Director's Hearing, and I put it off to give the owner time to prove that there ever was a permit there.

Commissioner Murphy stated you give them 30 days at that time?

Vice President Walker stated did you make a determination?

Mr. Sweeney stated I put the hearing off, I don't recall. Give them 30-day continuance to get a set of plans.

Vice President Walker stated so they came back and got another continuance?

Mr. Noelke stated no, we got a continuance in December and came back on January 13th, and that is when Mr. Friedman said at the subsequent hearing.

Vice President Walker stated right.

Commissioner Murphy asked did you have the set of plans when you came back the second time?

Mr. Wofsy stated at the first hearing, Mr. Sweeney said prove to me that there used to be a deck there. This is something from 35 years ago. I don't see the deck on any of the plans. So I had to go back into cold storage to find files from 25 and 35 years ago and had a copy of this extensive report we did which show:

A. The way the deck looked in the 1970s, which is pretty deteriorated.

B. The compliance letter from the San Francisco Redevelopment Agency, specifically saying that the decking platform on roof is damaged, repair it in an approved manner and install railing around decking and the certificate of completion from the Redevelopment Agency. Furthermore, there is part of this extensive report, done by a well known architecture firm at that time, Mark and Associates that was financed by the National Endowment for the Arts to renovate the building.

Mr. Noelke stated if I could just mention one thing? The permit sought was done by the Bureau of Building Inspection that was their report.

Mr. Wofsy stated as you see in the first part, which is the attachment to no. 3, the feasibility study that was done by Marks and Associates, they referenced the decks four or five times the existing deck. On the last page you will see that they have grey out with the deck area, that time the deck covered the whole second floor roof where it says H.

President Lee stated that was all presented at the second hearing?

Mr. Wofsy stated yes, basically, the first part of this package that I call attachment item was all presented to Mr. Friedman and he then sent it back to staff. I spoke to Mr. Berrios immediately after the Hearing and he said he admitted that, alright, you proved there is a deck but how do we know it is safe. We cannot permit a deck where people might fall in where it might not be safe. Get a structural report. I got a structural report on March 4th I sent it to them and on March 22nd they put a notice of abatement.

Commissioner Murphy stated getting back to what Mr. Friedman was saying, if you take down a deck that has been up there for 100 years it doesn't matter, if you take that deck down in order to replace it or out of an extension you have to get plans and permits, same with the stairs and that is why people keep 50% of stairs, so they do not have to get plans.

Mr. Noelke stated and we concur with that and that is why we have a permit out right now to comply.

Commissioner Murphy asked another question I have is more on the category of the structural capacity in that this could be construed as a deck could also be an assembly area. In that is there a limitation on the number of people that can go on that deck?

Mr. Noelke stated to my knowledge, there is not. We put a limitation on it.

Commissioner Murphy stated overloaded. Because hearing that when a party does occur out there, it release stresses beyond the calculations in here, clearly.

Mr. Noelke stated that would be addressed in the building permit. Yes, absolutely.

Commissioner Murphy stated occupancy and limitation of the number of people going out on

that deck there is very crucial.

Mr. Noelke stated yes.

Commissioner Murphy stated hearings from the other engineer on the Commission here?

Mr. Wofsy stated I agreed and I think the permit would address structural concerns and be taken care of usually by assigned engineers.

Mr. Noelke stated thank you. Yes, we have that structural report and that building permit.

Vice President Walker stated can I ask that question to our City Attorney? I believe that this deck, as it is now requires a permit that was not gotten in the beginning. I got that it is fully complied. In which case, I would normally say let's give them time and uphold the notice of violation but it seems to me that the Director's Hearing did not have a determination, so there is really nothing to appeal at this point.

Attorney Barnes stated if you find that as a matter of fact there was never an Order of Abatement issued by the Director, then you would not have jurisdiction that would be your factual determination based on the evidence you have heard today.

Vice President Walker stated ok.

President Lee stated so, Order of Abatement was never...

Attorney Barnes stated if you concluded from the tape that there was never actually an Order of Abatement and was referred back to the staff, an Order of Abatement never issued, you would not have jurisdiction, then there was never one.

Commissioner Murphy stated if you want us to listen to the tape, we will do it.

President Lee stated do we send it back to the Department?

Vice President Walker stated maybe we should hear public first before we comment.

President Lee stated let's have public comment. Is there any public comment?

Secretary Harris stated actually I explained that they gave you a little more time. It covers both of you. Three minutes for rebuttal.

Commissioner Murphy stated Sonya, do they have any more time or not? Secretary Harris stated I do not believe so.

President Lee stated we went through that already.

Vice President Walker stated that is ok. It seems to me like there is a need for this permit and the notice of violation that was issued and that processed. I believe that the Order of Abatement was not issued clearly enough at the last Hearing unless there is something subsequent to that tape that the staff has, so I would say that we do not have jurisdiction on this that we return it to the staff; and, if they wanted to have a Director's Hearing, going through that process to do it and bring it back to us.

Secretary Harris stated just one moment. We have a brief...

President Lee stated are we all set? Let's go with Commissioner Clinch then we will go with the rebuttals.

Commissioner Clinch stated so there is a discrepancy between what was said on the tape and what was said here that there was an Order of Abatement issued, and it was just a clerical thing at the conclusion at that meeting somebody took the notes that we would issue the Order of Abatement?

Mr. Noelke stated it is clear from the tape that it was returned to staff. Why in order subsequent to this issue that would have been a misunderstanding. These things happen all the time.

Commissioner Clinch stated so you did not receive an Order of Abatement?

Mr. Noelke stated we did receive an Order of Abatement, and a bill for \$1,500 assessment of cost.

President Lee stated anything else? Is there any public comment? No public comment?

My name is Samuel Rankin and I lived in the building for about 25 years. I just wanted to say that I think the deck was always there. The tenants enjoyed using the deck. Thank you.

President Lee asked any other public comment? Seeing none, ok. Department, you have three minutes for rebuttal.

Inspector Hinchion stated for the Director's Hearings, there are two key words. As was mentioned earlier at the first Hearing on December 9th, the case was continued. The key word is continuance so it comes back at least 30 days later. At the Hearing on January 13th of this year, the key word is advisement, that word was used at the Hearing; it was not really up to date, we had a parachute tape at the very end when there was a discussion in that case, I at it myself I witnessed it.

There was discussion went down back and forth for 3 minutes were exceeded on all sides. The meeting got fairly unpredictable and so the portion we heard at the end was the hearing officer saying it has been returned to staff. We iterating that he already said that 30-day advisement and talked back to the staff.

During the 30 days, there was a further opportunity to ask for continuance. They assured us that they were going to get permits to deal with the violation and that did not happen during 30 days and at the end of 30 days, the Department was obligated to issue an Order of Abatement and even it took a little time to process it.

Now here we are today that we have a deck that is occupied and there are no guardrails and if an accident happens, the Department is going to be asked how can we allowed this condition to continue. I would say that, if there is confusion, maybe we can consider requesting a transcript of the Hearing at that particular address that was held on January 13th and a written transcript that all of you Board members can review thoroughly, staff can review it thoroughly.

If I am somehow misspeaking, I will be glad to admit that at a later date but in absence of that, I would beg you please do not leave the Department in a vulnerable position where an accident may happen.

Vice President Walker stated I appreciate that. We only heard a key portion of what was presented. I hear what you are saying and I would feel more comfortable either getting a copy of the tape and being able to listen to it, to make sure that we have jurisdiction to do anything or get a transcript. I think that you are right and I hear what you are saying.

President Lee stated when it comes to abatement?

Commissioner Murphy stated they are saying get the transcript and give them another 30 days and another 30 day exception.

Vice President Walker stated well, I feel like the Order was issued, so I get that part. I am sort of confused as to whether we are supposed to follow the words of the hearing officer. I guess, we usually start our action once the Order is issued and an appeal is filed so that part was done correctly. We have not had a situation where there is a contradiction between what might have been said at the Hearing and the Order itself. I guess, that is where I.

President Lee stated the Board should reserve that discussion until after until we hear from the Appellant.

Mr. Noelke stated I would like to respond to Mr. Hinchion's comments. First of all, there is a guard rail, a significant guard rail. Secondly, the transcript and I have handled Director's hearings for years at the Department, an advisement is so that the case does not come back for another hearing but when you returned it to staff, generally but I have no problem with getting a transcript and looking at the whole tape to get the thing. I do not think we have a problem whatsoever with that so if we have to continue for 30 days or something like this.

Mr. Wofsy stated once again, I would like to do the final rebuttal. What Mr. Hinchion said is completely false. Never once was the word advisement used in our case. There were a number of cases that was very specific and in ours he never once used the word advisement and that is basically a due processing. I addressed that very clearly in the attachment to Item #3, Item B1 and B2. I object to what I considered an important lack of due process.

We submitted this extensive package to staff on September 15th. We never saw the staff report until when this Hearing started. In the staff report, they raised issues, none of which were raised before either in the notice of violation or in the Order of Abatement. They have extensive claims about why this deck is too large, never was that said before. They have claims how the Building Historical Code does not apply, that was never said before. There is a huge due process thing here. We did not have any opportunity to respond to the false charges that they have about which is the applicable code for this deck.

The original deck covered about 4,000 to 5,000 square feet on the second floor. When we renovated the building, it was reduced to about 1,400 or 1,500 square feet. Based on the staff report now, which we just saw for the first time, they said it could only be 500 square feet that would mean that, any time you reroofed a historic building you lose your roof deck, that could not be the intent of the Historic Building Code undo the historic features of this building. There has been a roof deck for probably about 100 years and it is the only open space for the tenants in the building and there has always been a roof deck. The implication here is that it is a brand new roof and it is not a brand new deck. The contractor who worked with the roofers is here and he can testify they simply replaced the deck that was there and replaced the back boards.

President Lee stated thank you very much. Commissioners?

Vice President Walker stated on the face of this, I would actually suggest that we uphold the staff's recommendation and give the Appellant some time to complete the work, that is what I would do, but I do have issues about procedure here. I want to have a discussion here with other Commissioners who are talking about.

Commissioner Mar stated I actually wanted to get it a little clearer what the Appellant wants in terms to resolve is. It seems like the issue is not just time because they have to redo the deck into a different and smaller configuration then it is not just time, so what is the resolution?

Vice President Walker stated it is a Planning issue.

Mr. Wofsy stated you are right, Commissioner. We just saw this for the first time 15 minutes ago that they are saying the deck can only be 500 square feet. We, in good faith, got a structural report as soon as and that is what a deck normally is it is only a building with 30 people and normally there are 2 people in the deck. Where there was one freak incident a year ago or a year and half ago where somebody had a party which is not approved. We do not allow assembly roof on our deck and we have house rules about that and we notified all the tenants as soon as I heard about that. It was only done anonymously through the Building Department and it should have been done through the Police Department if it was disturbing the peace; but you are right, this issue about the size of the deck is an incredibly important issue. The deck is a lot smaller than ever before, but it has been this size for 35 years and this is a historic building and we should be entitled to keep historic features, which is outside deck and not a mini deck. We would want to be able to make the case that the State Historic Building Code allows you to retain the features that were there originally in the same size.

Raising obviously safety issues, I consider these to be scare tactics. We had a well known structural engineer already determined that as walking deck for people to stand on is perfectly safe and we have a well-known architectural firm. What we would like to do is try to work out something.

Mr. Noelke stated perhaps the best course is to take a 30-day continuance. Look into this matter on the Order of Abatement, in the first place, and get that ironed out with the Department. I suggest that because there is an issue here which Vice President Walker brought up about the Order itself.

President Lee stated let me make a comment and maybe that will facilitate some sort of a solution. If I were Solomon and I was to see this case, I would say close the deck, do not allow anybody on that roof, reverse the Abatement of Order and let the Appellant go through the Planning process. So this way, nobody uses the deck while it is going through Planning until it is resolved. I think maybe that would be the best solution. Is there any way we can accomplish that?

Mr. Sweeney stated it would be better to check to see if the deck is part of the exiting system. I would like to figure out if the deck is part of an exiting system.

Commissioner Murphy stated Inspector Hinchion mentioned there were no guard rails on there? Are the guard rails not high enough? Can you explain that?

Inspector Hinchion stated we are back to the same problem as all here we do not initial permit for the deck, therefore, we cannot categorically say what condition it is in and so we have to assumed it is unsafe.

Vice President Walker stated is this a whirlpool on top? Is that a pool?

Mr. Wofsy stated no, what that is the storefront is on the ground floor and skylight. The wood around there is just to protect the skylight.

President Lee stated how about this? Can we maybe take a 30-day continuance on this matter and have staff go out and look to see if the deck is a required exit or what and then come back to the abatement report. Commissioners?

Vice President Walker stated what was this?

President Lee stated maybe we can just have a 30-day continuance and let staff go out and see if the deck is a required exit.

Commissioner Murphy stated and also to review the tape.

President Lee stated yes, and a chance to review the tape.

Vice President Walker stated I am ok with that, but the issue here, we did have an Order of Abatement that went out. The question is and the staff seems to indicate that was the staff's

contention is to issue an Order of Abatement. There are some issues about it but when you replaced a deck that requires a permit. The issue at hand here is really to be clear, I think, about procedure and in order to clarify whether we have jurisdiction to do anything.

I would support a continuance. I am at this point leaning towards upholding the staff's recommendation, but do want to have a little bit more information. The issue around decks is challenging for a lot of people we hear it all the time. If the deck that is in consistency, but not complying is falling apart, we want it to be safe, but in order for the deck to be rebuilt it ends up having to go through the Planning process because it is non-conforming, it is a challenge but it is not our job to make those rules.

Commissioner Murphy stated President Lee, did I hear a motion from you?

President Lee stated the first one, I wanted to hear what the Commissioners, my colleagues thought about.

Commissioner Murphy stated I added to your motion.

Secretary Harris stated what is the motion?

President Lee stated to just to see if we could just close for a 30-day continuance. After that, we talked about taking a 30-day continuance on this matter so to allow the staff to go out to review the deck to see if it is a required exit or not and at the same time, maybe get a transcript of the Hearing for us.

Vice President Walker stated well, if it is an exit, you cannot close it?

Commissioner asked do you only have these tapes? Are there transcripts in existence?

Mr. Noelke stated we only have the tapes. We do not have the transcript, sorry.

President Lee stated so the Department has a tape and a transcript.

Secretary Harris stated the Department has a tape but I am not sure if they keep a transcript. We can make a copy of the tape.

President Lee stated a continuance of 30 days?

Secretary Harris stated there is a motion on the floor for a 30-day continuance for the inspection of the property and also to get a transcript of the tape of the previous Hearing.

Vice President Walker stated during which time, the roof deck will not be used.

Commissioner Murphy stated is there something about exiting, also? It will be taken care of by the inspection.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>

The motion carried unanimously.

D. PUBLIC COMMENT

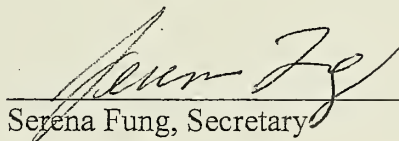
Secretary Harris asked if there was any general public comment on items not on the agenda. There was no public comment.

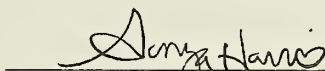
E. ADJOURNMENT

Vice President Walker made a motion, seconded by Commissioner Murphy that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 9:49 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, November 16, 2011 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. CONTINUED APPEAL: Order(s) of Abatement.

1. CASE NO. 6747: 1117 Geary Boulevard

Owner of Record and Appellant: Emeric-Goodman Associates, POB 2210
San Francisco, CA 94126

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ACTION REQUESTED BY APPELLANT: 1.) Appellant requested that the Order of Abatement be reversed and Assessment of Costs be waived. 2.) Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees,

As stated in the AAB's September 29, 2011 notice to the parties, the AAB voted to continue the case for 30 days to allow DBI staff to do inspection of the deck and to review the tape or transcript of the Director's Hearing.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD

Frank Lee, President
Debra Walker, Vice President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Mel Murphy, Commissioner
Criss Romero, Commissioner

DEPARTMENT REPRESENTATIVES

Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272
Sonya Harris, BIC Secretary (415) 558-6126
Teresita Sulit, Recording Secretary (415) 558-6267

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Francesca Gessner, Deputy City Attorney (415) 554-4762

D. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue.,
San Francisco, CA 94122

Appellant's Agent: Alla Dubrovsky, c/o Heather Wolnick, Tour-Sarkissian Law Offices,
211 Gough St., 3rd Fl., San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6753: 554 Fillmore Street

Owner of Record and Appellant: Megan Furth Academy, 2445 Pine Street,
San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and
Assessment of Costs.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

3. CASE NO. 6754: 536A Laidley Street

Owner of Record and Appellant: Ian D. Haddow, 536 Laidley Street, Bldg. A,
San Francisco, CA 94131

ACTION REQUESTED BY APPELLANT: To waive the Notice of Violation.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. GENERAL PUBLIC COMMENT

F. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6126** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6126 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, November 16, 2011 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED February 15, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for November 16, 2011 was called to order at 9:00 a.m. by President Lee. Roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified. Secretary Harris stated Commissioners Mar and Clinch were excused.

BOARD MEMBERS PRESENT:

Frank Lee, President
Debra Walker, Vice-President
Reuben Hechanova, Commissioner
Mel Murphy, Commissioner
Criss Romero, Commissioner
Warren Mar, Commissioner(excused)
Kevin Clinch, Commissioner (excused)

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Catharine Barnes, Deputy City Attorney

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B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. CONTINUED APPEAL: Order(s) of Abatement

1. CASE NO. 6747: 1117 Geary Boulevard

Owner of Record and Appellant: Emeric-Goodman Associates, P. O. Box 2210,
San Francisco, CA 94126

ACTION REQUESTED BY APPELLANT: 1) Appellant requested that the Order of Abatement be reversed and Assessment of Costs be waived. 2) Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees.

As stated in the AAB's September 29, 2011 notice to the parties, the AAB voted to continue the case for 30 days to allow DBI staff to do inspection of the deck and to review the tape or transcript of the Director's Hearing.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Secretary Harris stated each Appellant in the case is going to be allowed seven minutes to speak. In turn, they get three minutes for rebuttal and each person who speaks for public comments has three minutes.

President Lee stated that he understood someone wanted to make a request first?

Andrew Zacks stated that he is the attorney for the Appellant. The Appellant and the Department have met and had been working diligently to resolve this matter in order to facilitate resolution. They are requesting the matter for continuance for an additional two months so that they can finalize resolution and withdraw the appeal.

President Lee asked the Commissioners.

Vice President Walker made a motion to continue and seconded by Commissioner Murphy.

The motion carried unanimously.

President Lee asked all of those in favor? The continuance is granted for two months and called for the next item.

D. NEW APPEALS: Order(s) of Abatement

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

Appellant's Agent: Alla Dubrovsky, c/o Heather Wolnick, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd Floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Heather Wolnick stated she was the Appellant's Agent for Alla Dubrovsky.

President Lee stated the Department would speak first.

John Hinchion, Acting Senior Building Inspector in the Code Enforcement Section representing the Department stated they have a similar situation as was the previous case. The Appellant and the Department agreed to continuance so they would be happy to let the Appeal to decide if that is appropriate.

President Lee stated Commissioner Murphy made a motion to continue.

Vice President Walker asked if this one is requesting a continuance as well? Ok.

President Lee asked if the Appellant had a request to make?

Appellant's Agent stated yes, for the length of the continuance and they are asking for three months. There is arbitration in this matter in January so they would like to move this to February.

Commissioner Murphy asked what is it that you hope to achieve in three months? The Appellant's Agent stated there is a dispute between two adjoining owners in relation to the retaining wall that is on issue here and there is a binding arbitration in the beginning of January between the owners. They have been in a lawsuit against each other regarding the retaining wall.

Commissioner Murphy asked if the permit has been issued? The Appellant's Agent stated there is a permit and a permit suspension which also has been appealed.

Commissioner Murphy asked is three months enough time? The Appellant's Agent stated yes.

Vice President Walker asked the Appellant's Agent's name? She stated her name is Heather Wolnick.

Vice President Walker asked if there were any health and safety issues with this? Ed Sweeney, Deputy Director, stated not to his knowledge at this time.

President Lee asked do we have a motion? Secretary Harris stated that there is another person who wished to speak.

President Lee motioned to continue and they will take public comments on the motion to continue.

Rubin Becker stated that he is the attorney for James Wong who is a party subject to a companion abatement order and he joins in and supports the continuance based on the pending binding arbitration in January.

Vice President Walker made the motion, seconded by Commissioner Murphy to uphold the Department's recommendation and to give the Appellant 3 months for continuance.

The motion carried unanimously.

President Lee stated that they will continue that item until January.

2. CASE NO. 6753: 554 Fillmore Street

Owner of Record and Appellant: Megan Furth Academy, 2445 Pine Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and Assessment of Costs.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

President Lee stated if there is no request then they will hear from the Department first.

John Hinchion stated the Appeal number is 6753, 554 Fillmore Street, Complaint #201049987. This is an assembly use and the violation is for work without permit involving removing of finishes and two stained glass windows.

The Director's Hearing took place in May 19th of this year. An Order of Abatement was issued with conditions including 10 days to file for a permit to address the violations and 60 days to obtain final inspection approval. The staff recommends to uphold the Order of Abatement and impose an assessment of costs.

President Lee asked if there are any questions for the Department? He stated that seven minutes would be allowed for the Appellant.

John Callan for the Appellant stated Bob Lalanne is also here for Megan Furth Catholic Academy, which is now known as Mission Dolores Academy. There is a lot of confusion over this and in regard to that he submitted a letter two days ago and he wanted to make sure the Board had it say November 15th, which lays out their arguments. He asked if the Board received the letter?

First of all, just on the timing, they have no issue with what the Department just said except that the Notice of Violation was posted well after the work had already commenced and backing up a

little bit, the Megan Furth Catholic Academy bought this property in 2005 from the Roman Catholic Archdiocese of San Francisco and it is religiously affiliated with the Archdiocese. The principal benefactor for Megan Furth Catholic Academy was very involved in the acquisition of the property but unfortunately is no longer been able to support that entity. One of the ways to support its endowment was to sell the personal property that was inside the church, the pews, the altars, the tabernacle, and some religious artifacts. Those went to other religious affiliated catholic institutions across the country and there is a network for that sort of thing.

When the Notice of Violation was posted, that personal property had all been taken out of the church. Most of them had been shipped out but quite a bit of it was on the schoolyard on a separate lot, Lot 22a, and some of it was being crated up. He thinks people looked through the chain-link fence and saw that the property was being crated up. There was an anonymous phone call, of course, and that resulted in a NOV.

The following day, a stop work notice was issued but at that time there was just no more work being done. He would not rehash the legal arguments in the letter, but one of them is that you do not need a permit for that type of work but No. 2, and most importantly, is the Megan Furth Catholic Academy has an exemption from land marking or defacto land marking treatment. This property is not a landmark and is not listed on the National Register. It is eligible, but is not listed as a national landmark. It was treated as a landmark and therefore everybody thought that it should be subject to sequa and should be subject to heightened scrutiny.

This is specifically exempt from that type of disparate treatment under 8133 and now qualified in Government Code Section 25373. The City and County of San Francisco was well aware of this through a number of cases, the most recent being the California and Nevada Methodist Church versus the City and County of San Francisco, where it was held unconstitutional and an abusive jurisdiction to treat a landmark differently because it had a religious affiliation. This case was not a landmark but they are being treated as one.

Putting all that aside, Mr. Lalanne is here today, without waiving any of those arguments or changing any of that. If you can help him understand what it is, now that property is gone, what it is that can be done should comply with the NOV. It just says corrective action is necessary but the property is gone and they would like to get the NOV off the title and remove that cloud so the organization can continue to do what it is supposed to do which is to put funds in the hands of the needy K through 8 children of San Francisco.

President Lee asked if Vice President Walker want him to speak first?

Vice President Walker stated she just have a question, if she may, to clarify. This is a violation of no permit for windows?

Mr. Sweeney stated on June 2, 2010, the Department sent an inspector up to Sacred Heart Church and when he was up there, they were in the process of removing altars, pews, organs, statues, other finishes and they also removed two stained-glass windows that was visible from the street. Most of the work had been done, but not all of it. They were given a stop work notice

and they ignored that stop work notice. He personally went up there twice and during the weekend they came back and packed up everything and moved.

In his opinion, the pews, statues, the organs, they were permanently affixed to the building making them fixtures. You just need a simple permit to remove them. The Building Department is not asking them to bring them back and they are not asking them to replace them. What they are merely asking for them to do is abide by the Building Codes and to get a permit for the removal of two windows and the fixtures, that is it.

Commissioner Murphy asked if they are willing to do that?

Mr. Callan asked do you want to comment on just the facts?

Bob Lalanne stated again organ, pews, statues, tabernacle.

President Lee asked for his name.

Bob Lalanne stated he represented Megan Furth Academy and it is, K through 8, educating 300 low-income family kids. They are trying to sell their personal property and other things to help fund these kids' education. It is a bit frustrating that they are here spending on legal fees when they could be paying for tuition. This was all personal property and none of this was attached because it was going to fall down. Every church has a screw from a pew into the ground. This is really getting kind of a little ridiculous and on top of the fact that the altars and everything else had religious reliquary entombed in it from the Vatican.

This is truly personal property and he wants to make it really clear on the windows. They did not remove the windows and the wood windows are still there. They took out the glass, which was personal property, donated to the church. In section 17 of the Building Codes says you are exempt from getting a permit if you repair or replacement of glazing in conformity with this code. The wood window is still there. He is in the real estate business and a native and he has been developing in San Francisco for 30 years. He understands glass and wood windows and how they are important to the city and the wood window is still there. They took the glass out that was donated by the benefactor and was put into another church.

He is trying to get this really ridiculous thing solved. The corrective notice is impossible to solve, because he cannot bring back stuff that they do not own. How do they resolve this so that they are not wasting everybody's time? That is why he is here trying to get this resolved.

Commissioner Murphy stated they all know about fixtures and churches and many years looking at them, so he understands that. What he wants to ask Deputy Director Sweeney, are the windows still there minus the glass?

Mr. Sweeney stated right now, what you see when you drive up Fillmore Street is boarded up windows. He believes when he was there, the stained glass was gone. It is not a window anymore and it is an opening and the opening is covered by plywood. Again they are just asking

them to get a permit to document this.

Commissioner Murphy stated he could ask that same question. Are they willing to get a permit and have an inspector to take a look at this thing? Obviously not.

Mr. Callan stated the risk of.

Commissioner Murphy stated the Appellant's agent talks about not wasting time, but he is wasting their time.

President Lee stated they are just asking questions right now and will get to the debate later. Are there any other questions? There were none.

Commissioner Hechanova asked if there was payment for the stained glass?

Mr. Callan stated yes, there was.

Commissioner Hechanova stated so there is not really a replacement issue here, because the material was sold as opposed to just directly replacing something that needed repair? Mr. Callan stated correct. The stained-glass was taken out of the windows.

Commissioner Hechanova asked because it was sold and not for repair? Mr. Callan stated correct.

President Lee asked the Commissioners if they have any other questions. Seeing none, he asked should they take public comment first then rebuttal or rebuttal then public comments?

Attorney Barnes asked if they should take public comments first?

President Lee stated let's go to public comment and asked if there any public comment? Seeing none and then asked for the Department's rebuttal.

Inspector Hinchion stated there are numerous items as was referred to earlier on the Notice of Violation and all the items required a permit. The issue with the windows, if they were doing in a way they referred to, they could have maybe taken out the stained glass window and on the same day, put in new glazing. They would have no opportunity to question in order to do anything that required a building permit.

Once they took out a glazing and did not replace it with other glazing, boarded it up, made it an eyesore; because it is not entirely sealed, it is potentially allowing the elements to get into the building and cause dry rot so it is absolutely, without question, something that was done without a permit. You could look at all the issues and just look on that one issue, there is no question that it requires a permit. If there was any good faith at all they would have tried and worked with them in some way to facilitate to get a permit to deal with that window then they would discuss

maybe all the other similar issues but they cannot go beyond that without any effort to comply in any way with the Department.

President Lee asked a couple of questions. He understands that when the pews were affixed to the floor, do they know if the pews were affixed to the floor and the altar and the other structures that were removed are affixed to the building?

Mr. Sweeney stated he was up there twice. The pews were bolted to the floor and the altar would be more cemented and it would be permanent fix with cement. This would be the same kind of permit you would get for a simple kitchen remodel.

President Lee asked if the seats were affixed to the floor, it is an assembly building occupancy A1 isn't it? Mr. Sweeney stated yes.

President Lee asked if the seats are removed, it changes the occupancy? It depends, right?

Mr. Sweeney stated for now, if they would get a permit and work with Building and Planning Departments and indicate they want to go from a church to whatever they want to do.

President Lee stated that by removing the pews, the occupancy load changes and if that changes, it could affect the fire exits and all sorts of other emergency egress codes. Mr. Sweeney stated that is correct.

Vice President Walker asked as a follow up to that, how long was it vacant? Mr. Sweeney stated it was vacant for years.

Vice President Walker stated there is a law about a building can be term of change of use going from vacant to anything.

Mr. Callan stated the vacancy was because it is an UMB and it was impossible to comply with the UMB. There is a Notice of Violation because it is an Unreinforced Masonry Bearing Wall Building and the cost of fixes probably worth more than the property is and they were unable to use it.

Vice President Walker asked was it a code compliance issue that created the vacancy or something like that but still nonetheless there is a vacancy determined it, I think is 9 years?

Mr. Callan stated it has been vacant since and does not know how long it was vacant when the archdiocese owned it, but it has been vacant for a long time. It has been vacant since they owned it and they tried to use it for storage of items, but that was all it was good for. He wants to respond to Commissioner Murphy's question about the permit. If this is just an administrative procedure and they apply for a permit, and the permit gets granted, they would do that in a heartbeat and it just puts them in a difficult, catch-22 situation. They do not want to waive all the first amendment arguments and exemptions but if it is an administrative matter, absolutely.

Mr. Hechanova stated the Director mention a minute ago that it is as simple as getting a kitchen remodel permit and have it inspected and following the rules of the Department by doing that.

Secretary Harris asked the speaker his name? He stated that he was Appellant's agent, Mr. John Callan.

President Lee asked if there are any other questions? Vice President Walker stated she does not have a question and wants to discuss.

Commissioner Murphy stated he would like to make a motion.

President Lee asked if they are finished with the rebuttals from both sides. Secretary Harris asked if there are any rebuttals.

President Lee stated Commissioner Murphy:

Commissioner Murphy made a motion to continue this for 30 days in order for the Appellant to get a permit and have it signed off and if it is not completed in 30 days, they will act by the Department's recommendation.

Vice President Walker stated she is not going to second and made a motion to uphold the Order of Abatement and give the Appellant 60 days to resolve the issue, it is a little more.

Commissioner Murphy stated he made a motion and his motion stands.

President Lee asked is there a second?

Secretary Harris stated they will take a vote on the first motion and if that fails they will go with the second motion.

Vice President Walker asked what was the second motion?

Commissioner Murphy stated the Appellant will need a permit and to contact the Department for an inspection and signed off in 30 days.

Secretary Harris stated Commissioner Murphy made a motion to continue this item for 30 days to allow the Appellant to obtain a permit and to get it signed off and inspected. Otherwise the Order of Abatement will move forward. Commissioner Murphy seconded the motion.

Secretary Harris asked for a discussion.

President Lee asked are there any discussion on the motion?

Vice President Walker stated she has a discussion.

Mr. Sweeney stated the Appellant will be given 30 days and if they do not get the required

signoffs, then this motion is upheld? Commissioner Murphy stated that is right.

Vice President Walker asked if this is a motion to uphold?

Attorney Barnes stated she is unclear what the motion is or whether the Appellant will expect to return if they are unable to get a permit.

Commissioner Murphy stated they need them to come back in 30 days. Vice President Walker stated it is not upholding anything and it is just continuing.

Commissioner Murphy stated Vice President Walker is the one who is talking about upholding.

Attorney Barnes stated she wants to make it clear. Vice President Walker made a motion that, if in the end, they have not met those conditions, the Appellant will come back here in 30 days or the next meeting thereafter.

President Lee stated yes, any discussion?

Commissioner Murphy stated that 30 days is sufficient time?

Vice President Walker stated her feeling is that this is a violation and it needs a permit and the Department has acted accordingly by issuing an Order of Abatement. She thinks that, even if they get a permit, the violation has occurred and brought them here. They either have to uphold it or not uphold it and she will be upholding it whether it is now or when it comes back to them. She does not think they normally just ignore it and it has to come back to them anyway if they are continuing it because the Department took an action. By continuing it and having it disappear is not something that they can do. She asked Attorney Barnes to confirm if she is right. They cannot just continue it and have it rescinded.

Attorney Barnes stated there is an Order of Abatement that is neither confirmed or not confirmed. The Appellant would have to come back in 30 days, just as the motion it would seemed that if they would come back and do all the things that was expected of them then the Order of Abatement would not be upheld but she does not know whether that is the intention.

Vice President Walker stated they have not usually just overturned the abatement because somebody is willing to do the permit. What they usually do is uphold the abatement and then give them time to do it. Because of the action resolves itself so that is her argument for not supporting a continuance, she would rather take an action of upholding the action and then giving the project sponsor time to effectuate the resolution.

President Lee stated from what he hears, he does not think they are making a motion to overturn the abatement or support the abatement at this time. He thinks they are just making a motion to continue the item at 30 days, check the progress in 30 days and then debate whether to uphold or overturn.

Commissioner Murphy thanked President Lee. President Lee stated he agrees to extending this

for another 30 days.

Vice President Walker stated that would be the first meeting after 30 days?

President Lee stated on their regular meeting in December. He asked if there was any public comment on the motion?

Commissioner Hechanova stated he has something to add. Essentially, what for him, this does in a compliance issue is to allow for additional time for which the Appellant is willing to pursue the resolution to achieve what they basically have identified already and he thinks that a little bit more time to resolve this would meet compliance.

President Lee asked if there was any public comment?

Commissioner Romero stated as part of this discussion, he does not feel that he can vote for this either. Primarily because over the years there have been many people that have had the Order of Abatements that actually wanted to comply and this is a situation where there is an obvious non-compliance by the parties very directly has told them that they do not understand what the Department is talking about. It is clear to them that he is not convinced that the Department was unclear and what he is convinced that there was a resistance to comply with the Building Codes at all.

He does not feel as though it is fair to actually grant a continuance for a party that, from the beginning, did not want to deal with the Department. He does not feel as though they actually offered that type of leniency to other people that have come before them.

President Lee asked are there any other comments? There were none.

Commissioner Hechanova stated for him, given that not only the limited resources of an academy and the conversion of a building that has, for many years, needed the attention in helping move things in a category forward, he is in support of what really needs to be where there would be good faith efforts within the next 30 days to reach a resolution and to meet both sides needs, so that is his category is that this is a situation where they have to have that category of understanding what is really more important is to move it forward as opposed to generalizing it.

Vice President Walker stated there is a violation and the Department has been trying to resolve this issue, the resolution for the project sponsors to come and appeal the Notice of Violation and the abatement action. The violation happened, our precedent in what we usually do is uphold those types of orders and give the project sponsors time to resolve the issue and that is why she is voting against the continuance and will be making the motion to that effect to give the project sponsor time to resolve this and to uphold the abatement action.

President Lee asked should they have a motion to continue before they take a vote?

Vice President Walker stated she thinks she already did.

President Lee asked was there any public comment? There was no public comment.

Secretary Harris called to take a roll call vote before the motion.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>No</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>No</i>

Secretary Harris stated this motion fails because there are five Commissioners here and they need four for the motion to go forward.

Vice President Walker made the motion, seconded by Commissioner Murphy to uphold the Department's recommendation and to give the Appellant 60 days to resolve the permitting requirement issue.

The motion carried unanimously.

Secretary Harris asked if the motion was to uphold the Order of Abatement and assessment of costs?

President Lee stated and give 60 days to resolve.

Vice President Walker stated yes, give 60 days to resolve.

President Lee asked Catharine Barnes if she would explain to them publicly.

Attorney Barnes stated the rules are that you could hold a meeting if you have a quorum of the majority of the positions that constituted a Commission so you have a majority of Commissioners present, but in order to take action you have to have a majority of the seats voting in favor as opposed to the majority. You need 4 votes to support any motion.

Commissioner Murphy asked if he can make a motion for continuance until they have a full Commission?

Attorney Barnes stated that under Roberts' rules, a motion to continue takes precedence.

President Lee asked that, while they have a motion on the floor, Commissioner Walker's motion is to uphold the abatement and to give the Appellant 60 days to resolve the matter with the Department and if it is not resolved, the abatement is upheld?

Vice President Walker asked if they did not already voted on continuance and can they continue to vote on continuances?

President Lee asked if there is any debate on this one? Vice President Walker asked on hers?

Secretary Harris stated they will take a vote on this motion as well.

President Lee asked if there is any public comment?

Inspector Hinchion stated that if the full Board is not present but there is a quorum and if there are four votes out of whatever members present, does that not constitute a decision?

President Lee stated yes, it does and asked Catherine Barnes if she could explain.

Secretary Harris stated she just did. Basically, there needs to be a majority for that motion to pass and four out of five have to vote and get supported.

Attorney Barnes stated then the motion would fail and she thinks that there is an intention to have a straight motion to continue.

Vice President Walker asked what happens if there is no motion passed?

Attorney Barnes stated if you are unable to take action, it has been the practice of this Board to continue the matter until you have more but she would suggest that you have a motion to continue just to make the record clear.

President Lee asked on Commissioner Walker's motion?

Commissioner Romero asked do we have discussion? He just wanted to comment on the fact that Commissioner Hechanova said that this was an academy with limited resources but again, has to go back to issues in the past where they actually had people that had been in very indigent straits where they actually had to do repairs on their houses and they have not been in the best financial position and he does not feel as though they have been as lenient and these people were able to uphold the Building Codes. We have tried to work with them that way and this is not one of those situations. He knows that there is a question here as to who the decision makers are. He does feel as though there has to be some responsibility given over to the folks that are making decisions not to follow the Building Codes.

He just feels as though if they do this then just to avoid unfair treatment of other parties coming before them, they have to offer the same level of leniency otherwise it is completely unfair. He does not feel as though they can actually just disregard the fact that people were told that they were violating the City's Building Codes. Again, he is not convinced the people did not understand. He thinks that they did not want to comply and he believes that the Department is not being unduly hard or harsh against the Academy. He does feel as though they were given ample warning and the bottom line is that they just did not want to comply with the code. He does not think Commissioner Walker's motion is unreasonable. He thinks they are giving them

enough time and opportunity to uphold the Building Code as their inspectors had said that they must and it is just not an unreasonable request. He believes that the motion is fair.

President Lee added that he has a feeling that sometimes when they make a motion to uphold an abatement and give the Appellant time, is that they do not want to see the matter before them again and they are just trying to cut the time of having the Appellant and the Department appear before them again. But in this case, he thinks they are just saying let's continue the item and have the Appellant and the Department appear before them again in one month and let's see what is going on. He does not think the original motion from Commissioner Murphy was to say that they are going to uphold or deny the abatement but let's just see what is going on in a month and then decide again.

Commissioner Romero stated he does not see that at all.

Vice President Walker stated it is kind of unclear what is going to change between now and next month that changes our Building Code requirements. She also does not understand why this project sponsor is being treated differently. Maybe one of the Commissioners can answer that because they usually uphold when there is a violation, there is a clear violation and an admitted violation that the windows were removed and the boards were there. If you or I got permits to do or were replacing windows and did this, all of us would be in violation as well. They sit in their Litigation Committee week after week looking at buildings that are left and permits and building work that is done without a permit and they take legal actions and this one is pretty cut and dry. He is not certain what the difference will be between one month from now and now or whether a permit was required.

Commissioner Murphy stated he is not going to take up too much television time and he does not have to rationalize what he did to Commissioner Walker.

Vice President Walker stated he did not do anything to her.

Commissioner Murphy stated the way he sees it, they moved some furniture, statues, whatever. They could be bolted and maybe they were and maybe they were not. They removed glass from the windows and the frames are still there. They could put the glass in the windows, get a permit, get it signed off, and would move on. He would say the same thing if it was some kitchen remodel. If somebody did not understand and did not quite know what was going on, that is a historic building. It was a long time ago since he was changing glass in windows and the building inspector dropped off and he had no idea that he needed a permit to replace glass and he was told that he needed a permit to replace glass and that was a long time ago. His opinion is that he is giving them the benefit of a doubt and that is just his opinion.

Commissioner Hechanova stated they have to use good judgment in the category of not necessarily pitting single-family homes and their replacement of windows and if there was a violation versus say, a conversion of an UMB building where the higher and greater benefit to the community is, of course, operations at the school that would basically meet a greater need of students and their families.

He believes that leniency is in place here for the category that allows for resolution to happen without spending additional both money and time where all of this could be resolved with the Department and with project sponsors without having to come back and that is basically how to move this project forward.

Vice President Walker stated this is going to come back no matter what. The issue is are they going to require a permit or not? If you think that there is a permit required, that is why you uphold this and you say basically get a permit and it goes away. The abatement is removed and they are fine for the time because they have been offered the resolution of getting a permit from the time they issued a Notice of Violation and that is why they are here because the Appellant did not do it.

Commissioner Murphy asked if they can vote on Commissioner Walker's motion? Let's get on here. Vice President Walker stated well, absolutely.

Secretary Harris stated Commissioner Walker made a motion and seconded by Commissioner Romero.

President Lee asked if they should take public comment?

Secretary Harris asked if there was any public comment on this item?

Mr. Lalanne came to the podium and Vice President Walker stated he is not public.

President Lee stated that is ok.

Mr. Lalanne stated that Mission Dolores Academy has been trying to solve this which is why they have been going from one appeal to another. The way the language came back to them as to how to solve this -- it was not solvable. They cannot bring back personal property and they have been trying to solve this and that is why they came today to try to figure out what the solution is.

Mr. Lalanne said he is hearing today that the solution is that he does not have to find St. Joseph in Kansas City and bring him back and he does not have to go find the tabernacle and bring it back. It is good for them to hear that. He does not want the record to show that they have not been trying and they have been trying for a year.

President Lee asked if there was any other public comment?

Vice President Walker stated she has a question about what is the resolution. It is her understanding that they have to get a permit for the window replacement?

Mr. Sweeney stated they can get a permit for the window replacement. They can say they removed the stained-glass window and plan to put a different glass in and have removed all the fixtures. That is the end of the permit and that is one way to resolve this. The Building Department is not asking them to bring back the fixtures but they are asking them to get a permit to document the removal.

President Lee asked if there was any more public comment?

Inspector Hinchion stated as the Director just said, if the Appellant was able to assure them in the next few days that they would get a permit for the windows and the other items then the Department would be agreeable to have the Commissioners to go ahead with the discontinuance.

Mr. Callan stated they can represent that and what he is hearing, he just wants to make sure that he is not misleading in this regard that, if they apply for a permit, they are anticipating that is going to be exempt from sequa review which will bog them down for a very long time.

President Lee stated come back in 30 days and let them know what is going on if that is the case.

Mr. Callan stated he can represent that they would take the steps to apply for a permit for the things that Mr. Sweeney referenced today.

President Lee called for public comment?

Secretary Harris called for a roll call vote for this motion.

The Commissioners voted as follows:

<i>President Lee</i>	<i>No</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>No</i>
<i>Commissioner Murphy</i>	<i>No</i>
<i>Commissioner Romero</i>	<i>Yes</i>

Secretary Harris stated this motion fails as well so they would need a motion to continue.

President Lee asked if they could revisit the motion to continue?

Commissioner Murphy stated yes.

President Lee stated this motion is to continue.

Attorney Barnes stated it would be the cleanest record if there was a motion to continue whatever meeting they were trying to continue to.

Secretary Harris stated they would need a first and second on the motion.

Commissioner Murphy made a motion to continue to the December meeting and it was seconded by Commissioner Hechanova.

Secretary Harris asked is there any public comment on this motion? There was none.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>No</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Romero</i>	<i>No</i>

Attorney Barnes stated so it is continued as a matter of law.

President Lee stated the matter is continued to the December meeting.

3. CASE NO. 6754: 536A Laidley Street

Owner of Record and Appellant: Ian D. Haddow, 536 Laidley Street, Building A,
San Francisco, CA 94131

ACTION REQUESTED BY APPELLANT: To waive the Notice of Violation.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Inspector Hinchion stated Appeal #6754, 536A Laidley Street, Complaint #200670438. This is a single-family dwelling and the violation relates to kitchen and bathroom installed without permit on the ground floor and that is a Plumbing permit. The Director's Hearing took place September 1st of this year, an Order of Abatement was issued within conditions to obtain a Plumbing permit to legalize or remove insulation of kitchen and bathroom at ground floor and 90 days to complete all work including final inspection. The staff recommends to uphold the Order of Abatement and impose an assessment of cost.

President Lee asked is there an Appellant?

Mr. Ian Haddow, Appellant, asked if the Commission had been provided with some exhibits for their reference?

Secretary Harris stated yes, she gave it to them.

Mr. Haddow stated he is the owner of the property. It is a residential property consisting of two houses, and the subject house is the rear house, which he became the owner in February, 2003. Four months later a fire spread from the adjacent property and damaged the rear building. The adjacent house was beside his rear building.

The subject kitchen and bathroom are at the bottom level of the building and that level was damaged only by water. The builder he subsequently hired to repair the building only in that

portion of the building changed the wallboard and the electrical junction, which is for the entire building and the subject kitchen and bathroom were unchanged.

The first Exhibit I provided A1 and A2 are 3R reports indicating that there are two separate buildings, two separate reports, and they were built with permits, he will momentarily show permits. The subject house was built in 1952 according to the 3R report. The Exhibit B he is presenting is evidence of concern about the violation of August 30, 2006. With the help of his agent (his name is included is Martin Kirkwood), he sent message to an inspector and accompanying it were some of the documents he is will present to the Board and the second violation was issued a few days prior to August 30th.

Exhibit C is a request for permit, which describes a rumpus room and the building 12 feet high, and the date of that document is May, 1952. He is not an expert and the building is on a slope, and the existing building when measured from the front is approximately 24 feet high. It measured at the rear; it is only 12 feet high. He does not know how the measuring is done. His interpretation is that the owner at that time initially asked for approval to erect a one-story building and that was built and D is SFDBI approval.

E is dated 1955, and it describes a two-story building or rather a one-story above a basement. So seemingly, as he interprets the documents, while the one-story building was being built, the owner at that time asked for approval and was granted approval to build the second story and F is the SFDBI approval. Exhibit G is a covenant which was created between the City and County of San Francisco and the owner at that time, which describes the building as being linked in perpetuity to the front house and never separable and he is bringing that to the Board's attention in part because he has another copy of that covenant with a different date, a date of several years later, that is a two-page document and the date is on the second page.

The date here is May, 1952 (the different document), that is indication as he regarded as confusing records, mistakes in records possibly. He contacted the Water Department and was provided with several documents. H indicates that water has been supplied to that building. Evidently the one-story structure was plumbed and water has been provided to the building since 1953. I, which is a two-page document, includes account of the fixtures, and it is 1971. There is another date they installed in 1960. In reviewing this document, he counted that the total number of fixtures, toilets, etc., equal in the entire building.

Secretary Harris stated the Appellant has about 10 seconds left.

Mr. Haddow stated J is another count and K is a neighbor's recollection of the building having existed since the 1950's. The owner at that time contacted the neighbors and requesting their approval of a club building.

Secretary Harris stated the Appellant can finish his thoughts and he has 3 minutes for rebuttal.

President Lee stated that is quite alright, they can wrap it up in a minute and he will allow it.

Mr. Haddow stated L is a disclosure of his financial situation. The fire occurred four months

after the building and he acquired the building. Subsequently the builder he engaged with swindled multiple thousands of dollars from him, and eventually from other people while he pursued the builder for 3 years and he declared bankruptcy.

Mr. Haddow said he held the building by converting equity to cash to pay for it for full time and exhausted all the equity and he has not paid for the mortgage for three years. His tenants regarded foreclosure as a foregone conclusion. He would love for his tenants to remain and he did not want to create homelessness for somebody else when he was to be homeless. The tenants have not paid for three years, according to his account. If the loan modification is an option, he wishes to address this situation, but he does not know how to in his financial situation and there are other violations.

President Lee asked the Commissioners if there are any questions.

Secretary Harris asked the Appellant to take a seat and wait for rebuttal.

Commissioner Murphy stated he would like to hear once again from Inspector Hinchion exactly what is in front of them today. He has all this paperwork here and would like to hear it one more time.

President Lee stated he would like to know if the Department had a chance to review this too.

Inspector Hinchion stated the violation leads to work that was cited in 2006 and it is related to kitchen and bathroom. As the Appellant stated, there may be some documents going back some years, but they are not entirely concerned whether there was a kitchen or bathroom there or not. That the Appellant can bring in documents and that would be helpful to guide as to whether the appropriate permit would be to remodel the kitchen and bath or if the documents were not adequate, then the permit would be for a new kitchen and bathroom.

Commissioner Murphy asked how many legal units in the building?

Inspector Hinchion stated there are two buildings. There is a front building and rear building and that has been challenging as well. There are permits through the years for both the front and rear building and it is always a challenge to find out which building it is for, and how many units are in that building; but either way, they have not been presented with a Plumbing permit or anything related to the kitchen and bathroom remodel or for a new kitchen and bath.

Commissioner Murphy asked what about an electrical permit?

Inspector Hinchion stated there are some electrical permits related to other work but this violation is only related to the Plumbing.

Commissioner Murphy asked Inspector Hinchion, the plumbing and the kitchen work is what is before them today? Inspector Hinchion stated yes.

Commissioner Murphy asked Inspector Hinchion if it was at the front building or the rear

building? Inspector Hinchion stated the rear building.

President Lee asked if there are any other questions or public comment, rebuttal?

Vice President Walker stated this seems pretty clear, and she would like to actually make a motion to uphold the Department's action and give the Appellant a reasonable time to get the permit in whatever they think is 60 or 90 days to get the permit and do the work, whatever that is.

Mr. Sweeney stated he thinks 60 days would be sufficient to do this work. Vice President Walker can ask the Appellant if she thinks he can get a permit to do the work in 60 days.

Vice President Walker made a motion for 90 days.

Commissioner Murphy asked if that is to get permits and complete the work? Vice President Walker stated yes.

Commissioner Murphy seconded.

President Lee asked is there any public comment on the motion?

The Appellant stated his regard is more urgent to address. The top of the rear building is presently reached by stairs outside and there are stairs inside, but they have been enclosed by a former owner. The only means to reach the top story is through the outside stairs, which are becoming dilapidated and they were recently inspected.

President Lee stated we are talking about giving you 90 days.

Vice President Walker stated they are not dealing with that one.

President Lee asked are there no other public comment?

Vice President Walker made a motion, seconded by Commissioner Murphy to impose the Department's action and give the Appellant time to get permits within 90 days.

The motion carried unanimously.

E. GENERAL PUBLIC COMMENT

Secretary Harris asked if there was any general public comment relating to the Abatement Appeals Board? Seeing none, they can move to adjournment.

Vice President Walker stated she does not know where else to do this on the agenda for the Abatement Appeals and would like to get a staff report on 135 El Camino Del Mar, which they heard and wants an update on the next Abatement Appeal.

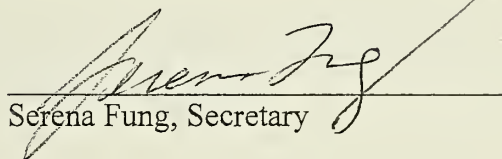
Mr. Sweeney asked if she just wanted an update? Vice President Walker stated yes.

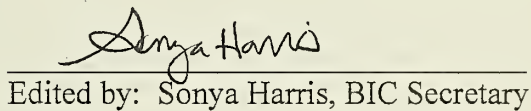
F. ADJOURNMENT

Vice President Walker made a motion, seconded by Commissioner Murphy that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 10:15 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, January 18, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on November 17, 2010, December 15, 2010 and April 20, 2011.

D. CONTINUED APPEALS: Order(s) of Abatement.

1. CASE NO. 6747: 1117 Geary Boulevard

Owner of Record and Appellant: Emeric-Goodman Associates, POB 2210,
San Francisco, CA 94126

ACTION REQUESTED BY APPELLANT: 1.) Appellant requested that the Order of Abatement be reversed and Assessment of Costs be waived. 2.) Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees.

Note: On September 21, 2011 the AAB voted to continue the case for 30 days to allow DBI staff to inspect the deck and to review the tape or transcript of the Director's Hearing. On November 16, 2011, the AAB voted to continue the case for 60 days to allow the parties additional time to resolve the matter.

MEMBERS OF THE BOARD

Frank Lee, President

Debra Walker, Vice President

Kevin Clinch, Commissioner

Reuben Hechanova, Commissioner

Warren Mar, Commissioner

Mel Murphy, Commissioner

Criss Romero, Commissioner

DEPARTMENT REPRESENTATIVES

Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272

Sonya Harris, BIC Secretary

(415) 558-6164

Teresita Sulit, Recording Secretary

(415) 558-6267

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Francesca Gessner, Deputy City Attorney

(415) 554-4762

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6753: 554 Fillmore Street

Owner of Record and Appellant: Megan Furth Academy, 2445 Pine Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and Assessment of Costs.

Note: On November 16, 2011, the matter was heard and continued by law to the next AAB hearing date.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6755: 336 Pierce Street

Owner of Record and Appellant: Levinson Family Revoc. Trust, A Frederick & Mariene Levin, 55 Raycliff Terrace, San Francisco, CA 94115

Appellant's Agent: Robert Noelke, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: To modify the Order to give the property owner more time (up to six (6) months) to comply.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6756: 423-425 Noe Street

Owner of Record and Appellant: Frear S. Schmid, 7585 Valley Ford Road, Petaluma, CA 94952

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and Assessment of Costs.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

Abatement Appeals Board - 1660 Mission Street, 3rd Floor - San Francisco, CA 94103-2414

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, January 18, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED February 15, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for January 18, 2012 was called to order at 9:00 a.m. by President Lee. The roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified. Secretary Harris stated Commissioner Romero was excused.

BOARD MEMBERS PRESENT:

Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Criss Romero, Commissioner (Excused)
Mel Murphy, Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
Rosemary Bosque, Chief Building Inspector
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Catharine Barnes, Deputy City Attorney

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B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on November 17, 2010, December 15, 2010 and April 20, 2011.

D. CONTINUED APPEALS: Order(s) of Abatement

1. CASE NO. 6747: 1117 Geary Boulevard

Owner of Record and Appellant: Emeric-Goodman Associates, P. O. Box 2210, San Francisco, CA 94126

ACTION REQUESTED BY APPELLANT: 1) Appellant requested that the Order of Abatement be reversed and Assessment of Costs be waived. 2) Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees.

Note: On September 21, 2011, the AAB voted to continue the case for 30 days to allow DBI staff to inspect the deck and to review the tape or transcript of the Director's Hearing. On November 16, 2011, the AAB voted to continue the case for 60 days to allow the parties additional time to resolve the matter.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Secretary Harris stated each Appellant in the case is going to be allowed seven minutes to speak. In turn, they get three minutes for rebuttal and each person who speaks for public comment has three minutes.

Secretary Harris stated the next item is Item C, Approval of Minutes, discussion and action for the meetings held on November 17, 2010, December 15, 2010, and April 20, 2011.

Vice President Lee asked if they will be able to take all three at the same time and is there a motion?

Commissioner Murphy made a motion, seconded by Vice President Walker to approve minutes of November 17, 2010, December 15, 2010 and April 20, 11.

The motion carried unanimously.

Secretary Harris stated the minutes are approved. They are going to begin with the Appeals. She asked President Lee if he would like to explain about the allotted time?

President Lee asked if they should do the continued Appeals first. He asked is there a special process for continued Appeals? Let's get an update from the Department first on what is happening, and then they will hear from the Appellant or should it be the other way around?

Inspector John Hinchion stated they could let the Appellant go first, they have their request.

President Lee stated they will have the Appellant first. The first item is 1117 Geary Boulevard.

Secretary Harris stated the Department and Appellant each has seven minutes to present their information and three minutes for each side for rebuttal.

Andrew Zacks, attorney for the Appellant, stated he hopes this is much briefer and he is here to request another short continuance of this matter consistent with an agreement that his client, the Appellant, has with the Department. The Board will recall, they were here in November and requested a continuance to allow the processing of a permit application that had been filed by his client. The permit application has been approved by the Historic Preservation and a Certificate of Appropriateness has been issued by Planning and the permit was released by Planning in the last week or so.

Mr. Zacks said it is now with DBI in a structural Plan Check Review and his anticipation is that the permit will be through DBI in the next couple of weeks, hopefully. At that point, once the permit is issued and it becomes final, it is his client's intention to withdraw this Appeal. So he would hope that the Board would look at this as an opportunity to move this case along, and he would request a continuance.

Commissioner Murphy asked how much of a continuance?

Mr. Zacks stated he thinks 60 days should be sufficient and feels the Board knows better what help to get through with the structural Plan Check than him and hopefully that would be sufficient time.

President Lee asked does the Department have anything to say or add?

Inspector Hinchion stated they are agreeable to whatever decision the Board makes.

Commissioner Murphy stated let's make it 90 days.

Vice President Walker stated yes, 90 days.

Vice President Lee asked if there was any public comment and made a motion to continue for 90 days.

Commissioner Murphy made a motion, seconded by Vice-President Walker to continue this item for 90 days.

Secretary Harris stated there is a motion to continue this item for 90 days and called for a roll-call vote.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>

The motion carried unanimously.

President Lee stated let's go to the second continued case, 554 Fillmore Street and asked if they should hear from the Department first or does the Department want to let the Appellant go first?

Inspector Hinchion stated the Department first.

2. CASE NO. 6753: 554 Fillmore Street

Owner of Record and Appellant: Megan Furth Academy, 2445 Pine Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and Assessment of Costs.

Note: On November 16, 2011, the matter was heard and continued by law to the next AAB Hearing date.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

John Hinchion, Acting Senior Building Inspector, Code Enforcement for the Department, stated Appeal #6753, 554 Fillmore Street, Complaint #201049987. It is an assembly use, violation description: work without permit includes removal of finishes, altars, pews, organs, statues, etc., and also two stained-glass windows. The Director's Hearing took place on May 19, 2011 resulting with an Order of Abatement with conditions, 10 days to respond and file for a permit to address a Notice of the Violation and 60 days to obtain final inspection approval. Staff's recommendation is to uphold the Order of Abatement and impose an assessment of costs. Thank you.

Commissioner Murphy asked have they filed for a permit?

Inspector Hinchion stated they have filed for a permit. They filed on November 18th and the last entry on the Plan Check history was November 28, 2011 and it is at Planning.

Commissioner Murphy asked did the permit they file for cover all the violations?

Inspector Hinchion stated yes, if this permit was issued and signed off, it would clear the violations.

President Lee asked is there a question with the Appellant?

Mr. Lalanne stated he really had nothing to report other than they filed for the permit a couple of days after this Hearing in November.

Commissioner Murphy stated what the Appellant is saying is that it is now at Planning and the

Appellant did not receive the permit?

Mr. Lallane stated they did not receive the permit.

Vice President Walker asked what are you requesting today? Do you want an appeal or a continuance?

Mr. Lallane stated he wants to continue until they get their permit.

Commissioner Murphy asked does anyone on staff know how long the process would take? It is in Planning and it is anybody's guess.

Inspector Hinchion stated he would consider treating both cases similarly, if that is ok with the Board.

Vice President Walker asked if Commissioner Murphy is requesting is 90 days?

Commissioner Murphy stated he is not sure if 90 days is enough when talking about Planning.

Vice President Walker made the motion, seconded by Commissioner Hechanova to uphold the Department's recommendation and to give the Appellant 90 days to resolve the permitting requirement issue.

The motion carried unanimously.

Vice President Walker asked is there public comment on this item?

Secretary Harris called for public comment on this item?

Vice President Walker stated thank you.

Secretary Harris stated they can continue with the vote on the motion.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Vice President Walker</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>

The motion carried unanimously.

E. NEW APPEALS: Order(s) of Abatement

1. CASE NO. 6755: 336 Pierce Street

Owner of Record and Appellant: Levinson Family Revocable Trust, A. Frederick and Mariene Levin, 55 Raycliff Terrace, San Francisco, CA 94115

Appellant's Agent: Robert Noelke, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: To modify the Order to give the property owner more time (up to six (6) months to comply).

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

President Lee stated the process will be seven minutes for the Department to speak and seven minutes from the Appellant and rebuttal and public comments.

Rosemary Bosque, Chief Housing Inspector, representing the Department of Building Inspection in this matter, stated this is a case that is before you in which the property owner had appealed the Order of Abatement issued by the Director's representative and they are asking for more time to address the structure that it is at the rear of the lot of record in this case. There is an 8-unit apartment building at the front of the structure.

If they could put this on she will show some photographs on both of the next agenda items. She described that here is the front of the subject building. This location here is actually, in addition to being a parking area, drives through to the middle of the lot, which she will show the Board in a minute and all of this is going to be germane with respect to the blighted conditions that had existed for quite some time. At the back of the lot, here is a an 8-unit apartment building then there is a space here where the driveway comes through the bottom of that building and the structure in question is about here and this is at the end of this particular very lot line and then she is going to show you a little bit more detail of that location.

Commissioner Murphy asked are these eight units occupied?

Inspector Bosque stated no, it is so dilapidated it is not occupied. The front building, the apartment building, as they put in their staff report, is a fully occupied 8-unit building, with the dilapidated building that is in the back and that building is approximately back here, as you can see. She will show a photograph of what the structure looks like and this is in the staff report, a color photo of it. As you can see, you cannot see all the structure, but the front portion has collapsed, there has been some shoring and it took a little time for this to happen.

Inspector Bosque said they had been at this since May of 2010, and as of this morning, there is not even a building permit application to address serious blighted conditions. Now albeit, this is not at the front of the building but the people in this apartment building and the adjacent properties need to deal with this. The property owner's representative is going to address this issue, she is sure, but the concern is whether or not they can legalize this or whatever and if they

want to work with Planning as far as that is concerned, that is totally up to them, but too much time has gone on. They talked with the Planning Department yesterday and with one of the team leaders.

Inspector Bosque stated the Sandborn Map and exhibits clearly show that in 1919 this was a stable. Then later on, the Sandborn Map shows this was for a garage, it was for automotive. They cannot find any building permit application that shows it was ever used legally for a dwelling unit, although the site inspections show there was some residential use going on at one time. While that may be dead end for the property owner, they may pursue that, staff does not have a problem with that, but they do believe absolutely that no continuance should be given and that an Order of Abatement should be upheld here because this is a serious blighted condition.

Inspector Bosque said because they have a blight ordinance and are looking at these things more carefully, they want to make sure they are consistent, so that is their recommendation based on the findings that they had and if there are any questions, she has a lot more exhibits but she thinks maybe the Board would like to hear from the property owner.

Commissioner Hechanova stated he has a question for Rosemary. Were these photographs taken from the rear side of the property?

Inspector Bosque stated this particular picture was taken in the rear yard. The inspector is standing somewhere under these trees looking in this direction here and that was a site inspection. She asked did that answered approximately where it was?

Commissioner Hechanova stated thank you.

Vice President Walker asked that it seems to her and she cannot tell but that maybe initially there was a fire? It looks like part of the, not that it matters she guess in the ultimate, but it is not just falling apart, it looked like it burned.

Inspector Bosque stated what they saw when they were out was there was a collapse of the front portion of the structure and then it took some time a couple of more inspections for them to even shore it and the message is today, 20 months later, there is not even a permit.

Vice President Walker stated she understood and it looked like it had suffered some burn.

Inspector Bosque stated they are concern from people, adjacent individuals, people from the apartment building they cannot really use this area. Also, there is parking back there. One of the things the Planning Department did tell them is that the 8-unit apartment building is already legally non-conforming and the built out under the present zoning would be for four units.

Inspector Bosque said unless there was substantial evidence that there was ever a residential use back there, what they would be looking at would be either repair or demolish the structure and restore the parking would be the only thing Planning would be looking at but because of the rear yard, the open space requirement, it is not likely that the Planning Department said they ever

approve any residential use back there. She is giving this as information but the problem is the property owner should have started that process months ago.

Commissioner Murphy asked regarding the side that is against the property, the neighbor's property on the back, they do not have a picture of what that looks like?

Inspector Bosque stated as you can see, there is so much vegetation that it is hard to take pictures and the property line ends approximately right here. As you can see, with all the vegetation, it was hard to get any pictures so perhaps the property owner could give the Board more maybe they got some other pictures that they were able to take.

Commissioner Hechanova stated one more question. Was there evidence of occupancy by animals or birds, by virtue of it being opened?

Inspector Bosque stated yes, it is open to the elements even though it has been shored up. The other concern they have is, over a period of time, the building disintegrates further. Within the last 20 months, there had probably been more damages and because it is partially collapsed, it is really hard to get in and be able to assess completely what is going on. It needs either to be repaired or, in this case, probably demolished, absolutely.

Bob Noelke stated he was representing the Levinson family, who are the owners of the property. This is a photograph of the building. This has been removed so far. They have a very seriously dilapidated building on this site and they know that time has gone on. This is 20 months now but the property owner has not stood still in this time period.

Mr. Noelke said the building is held in trust by two families and it took a great deal of effort for the various owners to agree as to what course of action to follow. They have been in contact with City Planning staff, they do not know at this point, but they are willing to entertain the use of this building as a single-family apartment over a garage and they have prepared plans and ready to submit that permit application this week. These are the plans that have been prepared and he has copies, if anyone wished to look at them. They included floor plans and this is all in preparation for a site plan. In addition, the property owners capped the gas, electric, and water lines to the source upon receipt and the building is vacant.

Commissioner Murphy asked if there are plumbing fixtures in there or have there been?

Mr. Noelke stated there have been fixtures there and, as you can see from this picture, there was residential use. Anyways he should probably leave it right there. They had to deal with problems of legality and when the Notice of Violation was originally issued in May of 2010, the owners were aware of the problem, and they are seeking financing to complete the rehab of this property. They received some bids and the bid that they have received so far is \$220,000. This is a major rehab project and financing is critical.

Mr. Noelke said he knows it has taken time for them to get here, but it has not been completely wasted time. They worked with the Planning staff, have a set of plans and had to prepare the set of plans before they could get contract bids out and so on and so forth. If the Order of

Abatement is issued, it would create a cloud on the title, which in a sense would work against them, because it would be more difficult to get financing to rehab this project.

Mr. Noelke stated the very thing they want to do is to make this building and it is already secured but they want a completely upgraded structure. In order to do that, they need financing and the Order of Abatement it put on would impede that process and would slow down significantly. In 2010, the owners were looking for money to do this project and they ran up against a brick wall and they are working on it now. Therefore, what they are asking that the Order of Abatement be held in abeyance, for a period of time, maybe two, three or four months so they can get their financing.

Mr. Noelke said of course, by that time, they will have this building permit issued and ready to go. It is the intention of the owners to rebuild a beautiful structure, put something really good in its place and that is their contention and concern. They would really strongly recommend that the Order be held in abeyance.

President Lee stated you mentioned the building is secured. Is that correct? What do you mean by that?

Mr. Noelke stated the plywood has been put around it.

President Lee asked is it now closed? Mr. Noelke stated that is right.

Commissioner Murphy stated while it is clear in the pictures that it is not safe the way it looks.

Mr. Noelke stated correct, it is unsafe.

Commissioner Murphy stated that is why he wanted to ask a question from staff. The owner applying for a permit to get in there and temporarily frame up the rear of that building and the building is exposed and put plywood and make it safe.

Mr. Noelke stated they could do that this week.

Mr. Sweeney stated what they might be able to do is require an engineering report within 10 days. Within 30 days, shore up and make safe, board up building, and file the building as an abandoned building and put it on our list.

Commissioner Murphy asked if he would be able to do that? Mr. Noelke stated surely.

Vice President Walker asked do you have a Plan B if Planning does not approve your residential?

Mr. Noelke stated a Plan B would be to reinstall the garage and put the garage back. Also, they are ready to pay for any staff time.

Commissioner Murphy asked if he has applied for a variance yet?

Mr. Noelke stated they have not. The Planning staff says to hold off on that. The other thing is they are willing to pay for DBI's staff time to date or whatever assessment the Department would have but they do need this additional time in order to get financing to get this project off the ground.

Commissioner Murphy stated if he adheres to the suggestion of staff to make that building safe, he cannot just throw a plywood around the side as it is now but it needs to be properly framed out and properly sheeted with plywood so that people cannot get up and over that then if that is done, it is up to the staff.

Vice President Walker stated their action would be to uphold this action and give him four months to comply, to hold it in abatement if he comply with staff.

Mr. Noelke stated if the Board could hold it in abeyance that would be a tremendous help to them.

Commissioner Murphy asked could they make it six months if things move pretty slow?

Vice President Walker stated she would rather make it a shorter time and he said four months.

Mr. Noelke asked could they go five months? Six months is pretty short.

Vice President Walker stated she would make that motion of five months and then if they need to come back.

President Lee asked the motion is for five months?

Vice President Walker stated yes, to uphold the staff recommendation and then hold it for 5 months.

President Lee asked to give them 10 days to obtain a shoring permit and 30 days for an engineering report?

Vice President Walker stated yes. Commissioner Murphy stated he will second Commissioner Walker's motion.

Secretary Harris asked if there was any public comment on this item before the Board votes?

Mr. Henry Karnilowicz stated he is a member of the San Francisco Coalition for Responsible Growth and he just want to say that he thinks they are all aware of it, doing a big project because what it is that Planning is going to be the big holdup. He just wanted to get that across here and making it secure is a wise way to go.

Secretary Harris asked if there was any additional public comment?

Commissioner Hechanova asked has the applicant received the timeline as to when the potential Planning review will take place?

Mr. Noelke stated they anticipated that they are going to file within the next week or so for their review.

President Lee asked if there was any more public comment or rebuttal. The motion is that they will uphold the abatement for five months and the owner is required to obtain a shoring permit to shore up and make safe the building within 30 days and the engineering report in 10 days and file as an abandoned building.

Attorney Barnes stated the Board may want to hold the Order of Abatement in abeyance.

Vice President Walker stated thank you.

Vice President Walker made a motion, seconded by Commissioner Murphy to uphold the Order of Abatement in abeyance and to obtain a shoring permit to shore up and make safe the building within 30 days and the engineering report in 10 days and file as an abandoned building.

The motion carried unanimously.

2. CASE NO. 6756: 423-425 Noe Street

Owner of Record and Appellant: Frear S. Schmid, 7585 Valley Ford Road, Petaluma, CA 94952

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and Assessment of Costs.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

Inspector Rosemary Bosque stated the staff and the Department are asking the Board to uphold the hearing officer in this particular instance. They have a four-unit apartment building, checking the building right here. Watches to orient the Board because there will be a couple of issues that will come up here and that is, when standing in front of the building, one cannot see the extent of the north side here and there is a situation here and really the story in this case is, what would make this very easy, is the property owner had done some of the work, but he has never facilitated a routine inspection, going back to the last one they asked for in 2002. He does the work and then the inspector has to try and get in and he does not show up for the inspections.

Inspector Bosque said the Board has in front of them a series of documents that showed when they did the request letter and asked for access. If he was not going to be able to make that particular time and date then he was to call the Inspector to schedule something else. On the

Notice of Violation that was issued, it also says the property owner needs to make the date and time of the re-inspection, if he cannot secure a different time frame, but warnings for the Notice of Violation talked about that in a couple of instances. Chapter 3 of the San Francisco Housing Codes requires that all apartment buildings three units or more be subject to periodic health and safety inspections and that is how they started.

Inspector Bosque stated when the inspector could not get in, he found himself at the adjacent property, this building right here, this large building. He saw the peeling paint on the subject building, it is a pre-79 building and there is a presumption of lead-based paint. He wrote that Notice of Violation up on this, but they never had a chance to get in and see the whole building. There has been a conversation in September of this year between the inspector and the property owner, but they still have yet to be able to get in and see that.

Inspector Bosque said while they were able to see part of the south side and write up for peeling paint, they were not able to see this location. It is not their policy to try and crash other adjacent properties in a situation like this, where they are trying to do a routine inspection, so that really would have probably had the inspection occurred since they saw that the property owner had painted the front of the building, had given documentation to show them that the fire escape at the front of the building was serviced, as far as maintenance.

Inspector Bosque stated there is the building itself, but they have not been able to get in to see if this side had been done and to be able to see the garage and the entire circumference of the building for purposes of the routine inspection. She showed the Board that large building and to show what that looks like from the street. It is a 7 and a half feet fence and the inspector cannot jump over that. So this is that alleyway on the adjacent property over where they cannot see over that, this is what it looks like when you are standing there. At 7 and half feet or more, the inspector cannot look over that and see what is going on with this building. This is the subject building and that is just to orient the Board.

Inspector Bosque said they would have been very happy and would not have to be here with the property owner, if he had given them access to the building and that is what it is really all about. From that standpoint, time and money, and extended code enforcement has occurred but she wants to give credit to the property owner because he did do the work. They wrote up some work at the exterior front steps, the Appellant did that, painted the front of the building and gave them the documentation, but they need access to be able to see the rest of the building.

Vice President Walker asked up until now the Department still does not have access?

Inspector Bosque stated he still has not given them that access. As the Board can see from the staff report, it is in all of their documentation, so they are really willing to work with him, but they just need that cooperation. He may have some other information that she may not know of that he may like to share with the Board.

President Lee asked is the property owner here?

The Appellant, Mr. Schmid stated the simple issue here is he was issued a Notice of Violation.

President Lee asked the appellant's name and if he could identify who he was.

The Appellant stated his name is Frear Schmid and he is the property owner. The simple issue here is he was issued a Notice of Violation last July regarding the alleged problems with a step, which was not true but nonetheless, instead of going to the extent of this procedure, he simply repaired it. These are old Tawakoni steps, manufactured stone block steps and it had a crack in it.

Mr. Schmid said one crack in it on the second or third step up, which he filled in with some special adhesive but it was never a problem. There was a crack and it did not pose any health, safety, or any public danger. The only reason that he was cited obviously was retaliatory, because he was not present there for the inspection. The other issue with the fire escape ladder, which has always functioned and he submitted that proof that it did function. There is no reason for anyone to suspect it did not function, but nevertheless, he submitted the proof for that. Those are the two items on the original notice, which he thinks they were wrongly cited in the first instance, but he did what they requested.

Mr. Schmid stated the inspector came out to inspect those two items, and lo and behold, he finds something else that was very evident the first time so it is clear this is totally retaliatory because the day he found on the second code inspection was chipping paint on the south wall of the building, which it extends maybe four feet out beyond the neighboring building to the south. The building had been regularly painted and there might have some chips in the paint, but it was not in disrepair and it certainly posed absolutely no health or safety issues and that is the standard here.

Mr. Schmid said there has been no evidence in this whole proceeding that there have ever been any health or safety issues. Until they meet that threshold issue, they have not even met their burden for establishing a violation but then they also cited the north wall which is kind of ironic here because he fancy himself maybe not in the eyes of everyone but certainly the eyes of his tenants as a good landlord. He provided good housing for his tenants and have over the years.

Mr. Schmid stated some of them rented well below the market and he does not regularly raise his rents. He rent to a guy in there that had real problems and he has not paid him rent for months so he is not someone abusing tenants out there. He is someone who is adding to their community, he pay his taxes and paid them on time, he paid \$7,000 taxes on that property. The property has always been in good condition and no one has submitted any evidence to the contrary.

Mr. Schmid said anyhow, going back to this north wall issue, it had been covered with ivy that had grown from an adjoining lot which would have been to the northeast corner of his building and that ivy growing up on that north wall for the last few years. In the past, he had periodically had to take it down because he had painted that wall in the past. So he took that down because it was getting to be a problem and it was really covering up the wall massively.

Mr. Schmid stated now it has taken down a couple few months before this whole incident arose, where they alleged the north wall is peeling paint. Well, removing that ivy obviously exposed

that wall which had not been painted because the ivy on there. The process of removing the ivy, obviously, he does not know if you have any experience with moving ivy, but it adheres to the wall. It clings on there so you have to pull it off and that obviously chips some of the paint, etc.

Mr. Schmid said the bottom line is, that did not pose any health, safety or any other issues at all in this matter. The wall was timely painted and it was completed in a timely fashion, per the notice. They gave him an x amount of time to do it. He understands the fact that he did not believe that he was required to do it because there is no health and safety issue, but he did it. Not only did he paint that wall, he painted the whole front of the building as acknowledged here and that side wall and so it is done. It has always been done and it is uncontroverted that it is done. No one has committed one iota of evidence to the contrary and he testified to that fact at the Director's Hearing. There is no one there to contradict him and the only issue was this issue of inspection.

Vice President Walker asked why he didn't let them come in and inspect? It is a requirement as a renter of over 3 units.

Mr. Schmid stated Vice-President I respectfully disagree.

Vice President Walker stated she disagreed with him.

Mr. Schmid stated he asked at the hearing and he cannot recall the gentleman's name because the inspector did not show up. He asked at the Hearing, is there any code that requires that and he could not cite it to him and there is no code. He challenged any one of the Board sitting here, staff, to cite him a code. There is no such code that requires him to allow an inspection. Now they can ask for an inspection, they can ask, just like a cop come walking down the street can ask him questions, but he does not have to afford them an inspection, and there is no law that requires him to give an inspection.

Mr. Schmid said the fact of the matter, that is not the issue here, and not whether or not he violated a law on inspection and this is an abatement hearing and the question is whether not a nuisance existed that has been abated. It is uncontroverted that He abated the alleged nuisance which he disputed that there ever was one but it is uncontroverted or whether he is allowing an inspection. He is not done, with all due respect.

President Lee stated his time is up and they would like to ask the Department whether they can answer his question or not. Is that alright?

Mr. Schmid stated sure, thank you.

Inspector Bosque stated members of the Board, there are a few things that need clarification. The property owner was using the term health and safety in a very broad way, but not necessarily as it is defined in the City and County of San Francisco under the Municipal Codes. Chapter 2 and Chapter 3 of the San Francisco Housing Codes lay out and Chapter 10 specifically what the substandard conditions that are considered health and safety violations. She might want to point out that in the staff's report the actual request letter for the routine inspection cites the code

sections that required the routine inspection. If you then look at Chapter 3, it says apartment buildings shall be subject to this inspection that is a very clear language that says that is a required inspection.

Inspector Bosque said not only is that in the letter, but the letter is accompanied by a several page list telling the property owners what the items are that they are going to be looking at and it is also in the request letter. They do give the property owners, when they set these inspections up, a lot of information. They definitely would say that the property owner's contention that it has never been refuted is completely in error of all the documentation the Board has before them. The Notice of Violation clearly has language about the inspection, that an on-site inspection is required.

Inspector Bosque stated the Notices of Violation warnings could have gone back to the Building Codes and the Housing Codes clearly shows when you do work, it has to be verified by on-site inspection and the same thing with the routine inspections if you have an apartment building in the City and County of San Francisco. Again, they are in a situation where they have acknowledged that the work that they can see from the street had been done, but a routine inspection has not been done, that when they asked for one back in 2002, they got the same response so there is a pattern from this particular property owner. They would like to work with him on this issue because they do not think it would take that much time and if they cannot gain access to see that all the work was done, you also have in your package, clearly, there was peeling paint here.

Inspector Bosque said as you can see, she will show you some colored photographs. This is what the inspectors saw from the adjacent property owner and they cannot be crashing or going either to an adjacent property to get in, and they won't be able to do that to be able to see the entire property. They need to be able to see the garage, and they need to be able to look around the back of the building to see what the egress is. They have yet to be able to get into that garage area to see the whole back treatment, to see whether or not there is any additional peeling paint and they have not gotten access. So with respect to that, they do believe that the hearing officer was correct in making sure that an order issued, so that they could encourage the property owner to work with them. They try to give him as much information as possible so they do disagree with his clarification of the issues.

President Lee asked Rosemary if this all started with what he understood is a routine inspection of an apartment code once every 3 or 4 years or something like that?

Inspector Bosque stated yes, they made a request in 2002, he did not show up and then a subsequent request was made. The inspector saw something visually at the front of the building, wrote that up, waited; and when he was at the adjacent property, saw the peeling paint and he put them together. The reason why the inspectors wait is because they try not to write 2 or 3 or 4 notices on the same property because they are trying to work with the property owner. So he waited thinking that when he wrote that first notice that he would get access at the time of the re-inspection, and then he could talk with the property owner.

Inspector Bosque said if at any time, this property owner felt that there was a question or he did not think the call that the inspector made was appropriate, if he would have had shown up for the inspection and looking at it then they could have had a discussion. They had not had the opportunity to discuss it with him at the site. Again, they feel, that on the basis of what the Board heard from the property owner and what is in the staff's report and her testimony that they do feel that an Order should be issued so that they can work with this property owner more specifically in the future. Thank you.

President Lee stated rebuttal, three minutes.

Mr. Schmid stated he does not think it is fair to limit him three minutes in light of the issues tendered here but, first and foremost, this is an abatement proceeding and he presumed each and every one of you understand what an abatement is. An abatement is not an order for to him to allow an inspection. Only a court can order him to allow an inspection and it is just that simple.

Mr. Schmid said the Board has, with all due respect, no power, as the Director, he did not have the power to order him to allow an inspection, that is not within the Board's jurisdiction and there is no law that says he has to allow an inspection and the inspector cannot cite the law. All that says is there shall be an inspection. How that is procured is whole different thing and that requires a court order. The fact of the matter is they do not have one so that is a simple situation. It is absolutely a misrepresentation that they cannot see that the work was done, that is not important here, and they cannot verify that it was not done. He has stated under oath at least two occasions the work is done and there is absolutely no evidence to the contrary. H did the work well within the time limit as set forth by the original Notice of Violation and it was done at the Director's Hearing. He submitted un-rebutted evidence at the Director's Hearing that the work had been done.

Mr. Schmid stated there is no evidence whatsoever that the alleged violation had not been repaired and it has been repaired. He represented to the Board, if they want to see the painting receipts, he has them here. The work is done and no one can testify to the contrary. They can also, contrary to what was stated, they can see from the street the work was done. The pictures they proposed here showed that when you are on 17th Street looking over that fence, you can see that work was done the very areas that are depicted in those pictures. If they are so sneaky that they go into the neighbor's yard to gain access to his yard, then let them do it again. He does not like to live in a country where people are sneaking around to neighbor's yards looking into his yard frankly and hope each and every one of you find that offensive as well.

Mr. Schmid said this is a free country. You do not have people sneaking, snooping and "ratting you out" by sneaking into the neighbor's yard that is not the way they operate in this country. It is wrong and it is in violation of a well-established law. If the representative does not know that, then the inspector is woefully ignorant of the applicable law. He is astounded that she is getting up here and arguing with a straight face that he had an obligation to allow an inspection. The U.S. Supreme court has declared it to the contrary. They know it and if they do not then they should know it and he is shocked that they do not know it.

Commissioner Murphy asked why didn't he let the inspectors in?

Appellant stated because he believes in freedom.

Commissioner Murphy stated good enough.

Mr. Schmid stated he has rights, just like he has a right to free speech and he does not have to explain to anyone why. It says in the fourth amendment he has these rights. It says in the California Constitution he has a right to privacy and a right to his human dignity and he does not have to be exposed to unsolicited and unsupported accusation. If they have a problem, they have the remedies but he is insisting on his rights and he thinks if all individuals did that they would be a better country, quite frankly, instead of allowing this to run over.

Vice President Walker stated she does not have any question and ready to talk about it.

Mr. Schmid stated thanked the Board for their time. The point is there is nothing to abate, so the abatement order is felonious.

Secretary Harris asked if there was any public comment on this item?

Vice President Walker stated she appreciates the passion by which he delivered his position. However, in the city, thankfully, they have some laws around making sure that apartments and spaces that they rent to tenants, as a landlord, are inspected and that is called the routine inspection so when you rent to people, you agreed to do that and a lot of landlords in the city do it.

Fortunately, they have tens and hundreds of thousands of rental units in the city so it is their job to make sure they are safe, and no one here has been able to go in and inspect common areas of this building, nor the walls that are not accessible, because the property owner has not let anyone in to inspect, so our inspectors are not able to do their job. She actually thinks that they should be upholding this action from the Department, and hopefully, the property owner will comply and she would vote to uphold the recommendation to the staff.

President Lee asked has this situation ever occurred in the past? What have the inspectors done in the past to ask the property owner to give them access for a routine inspection?

Inspector Bosque stated they try to work with the property owner and that is the first thing. If they cannot gain access that way, especially when they have been able to see that there were violations, their next course is to consult with the City Attorney's Office and possibly get an inspection warrant because they now had more than five years since the time that this particular building has gotten a routine inspection.

Inspector Bosque said since this is a pre-79 building, they do also want to make sure there are no other lead paint issues going on the exterior and there may not be. They do not think this inspection would take that long, but they also have a garage area and they have to make sure this is properly sprinkler or storage or whatever the issue is.

Inspector Bosque stated they all know there had been fires in apartment buildings. If there is a garbage chute or anything like that, these are all the types of things that are on the list that were in the package given to the property owner as part of a routine inspection program to try to minimize those problems happening in the city and this particular program has existed for the last 25 years. They will continue to work with the property owner, but if he is of a different philosophy, then they will consult with the City Attorney to gain access.

Commissioner Murphy asked Rosemary regarding the picture that was taken of the pipe that had the peeling paint and where was that picture taken from and if it was taken from the street.

Inspector Bosque stated it was taken when they had the routine inspection and he did not show up, then the next day they were at the adjacent property.

Commissioner Murphy asked is that the policy of the Department?

Inspector Bosque stated if they are legally in place and they can see it in plain view, which the inspector was, he was on the adjacent property, you could see the peeling paint, then it is right for writing a Notice of Violation to get the property owner in the process, especially because of the particular history.

Commissioner Murphy asked isn't that trespassing if they go into somebody else's property?

Inspector Bosque stated they were lawfully on the adjacent property doing an inspection of that property. They were doing an inspection of this property here, the inspector was about over here and he saw the peeling paint on the adjacent property and it is part of the property on the corner. He was led into this property to do this inspection and what he was doing was what he would need to do with this property, he was walking around the outer edge of the property for a scheduled inspection with this particular property and as he got to here, he could see the peeling paint here.

Commissioner Murphy stated he understood now and it is not their policy to go on property without the permission of the owner.

Inspector Bosque stated no, and other things they do is why they send that whole package to the property owner, requesting the inspection, why the inspection, the Codes Section, and a whole list of things that they are going to look at. The list she showed the Board, 33 items are on there, so that the property owner knows what they are going to look at because sometimes they may have minor items that they can fix before they get there and it is a reference material for them.

Commissioner Murphy stated they need to be careful with trespassing issues. Inspector Bosque stated absolutely. They were not but it was in plain view and here they had a situation where the property owner had not showed up and they saw that they had that condition.

Commissioner Murphy stated got it. Thank you.

Commissioner Hechanova asked Rosemary whether the inspector that took the picture was the same inspector that had cited the violation? Inspector Bosque stated yes, he is here.

President Lee asked Rosemary if this was the first time that something like this happened? Inspector Bosque stated no, this happens on occasion.

President Lee asked so how did the other ones get resolved?

Inspector Bosque stated well, what they did was send letters and kept trying to get in and it is a little different. If they get no response that is one thing they keep trying but when they have a property owner get up and say he is not going to let him in that then tells them that maybe they have to do something else. So in a situation like that, when it has happened before and the Codes says they had to do an inspection, then they consult with the City Attorney about possibly obtaining an inspection warrant, that is what they have done in those instances. They generally do not come up because property owners usually cooperate with them when they understand what they are there trying to achieve and they are there to work with them.

Inspector Bosque said she readily acknowledged the work that they did observe from the street and they are not saying that this property owner did not maintain his property. What they are saying is that they did see some things that need to be corrected and they needed to be able to get in to be able to verify on site what is happening and to do the routine inspection.

President Lee stated you would go to the City Attorney's Office to get an order for an inspection?

Inspector Bosque stated in this particular instance, if the Board voted to uphold the order, then they will try to work with the property owner further but if he is adamant that they will not be able to do a routine inspection that he will not let them in then they will consult the City Attorney to further research what they can do. They can get and have gotten inspection warrants in the past when they have not been able to get in.

President Lee asked why didn't the Department obtain a warrant for an inspection now before it reached them here?

Inspector Bosque stated because that is not a process within the City and County of San Francisco. The code says that these buildings are subject to an inspection. So most property owners cooperate with them and let them in. The other thing that she will tell you what will happen is, if they do have to get an inspection warrant, the property owner will be billed for this so most property owners do not want to do that. There is a case law that says the property owner is obligated to let them in without a warrant, but if he refuses, then that is the course that they take.

President Lee asked Attorney Catharine Barnes if she had anything else to add to that and if that is correct?

Attorney Barnes stated no, the only thing that she wants to make clear is what is before the Board is the Order of Abatement. The Order of Abatement is connected to the work that needed

to be abated that was visible. The fact that they also did not allow the routine inspection, she is not sure that is within the Board's jurisdiction but they are connected in this case.

Inspector Bosque stated there is a reference to providing an inspection in the Notice of Violation that is before them.

Attorney Barnes stated that is the inspection of the work that you observed to have done.

President Lee stated so the abatement order is for the paint and the step?

Attorney Barnes stated the paint and the step and the inability for the City to make the inspection to confirm that the work is in fact had been done.

President Lee asked if the Department visibly solved these items without the property owner present, couldn't you go back and confirm that they were done without the property owner's consent?

Inspector Bosque stated no, because they now do get back to the routine inspection issue but it is from the stand point, that because he failed to show up for the inspection the day before, when they were at the adjacent property and saw the condition, they were there for a scheduled inspection with that particular property owner. They are not going to now call him and say can they get access to his property to inconvenience him because the adjacent property owner won't let them in, that is not their policy.

Commissioner Mar stated he just has a follow up for clarification. There were two Orders of Abatement, one for the front step and one for the paint. Obviously, the front steps, you could see from the street, but you could not fully inspect the paint issue from the street. Inspector Bosque stated that is correct.

Commissioner Mar stated that would still be outstanding. Inspector Bosque stated correct.

Commissioner Mar stated as far as they are concerned, no matter what was done unless they inspected it and see that it was done, it is not done. Inspector Bosque stated thank you.

President Lee asked Commissioners?

Vice President Walker made a motion to accept the abatement order.

Commissioner Murphy stated he just think this far too much staff time is being spent on this already. He does not know how it is in Valley Forge, California, but they are in an economic downturn here and they are running inspectors back and forth. He wants to second Commissioner Walker's motion.

Attorney Barnes stated so the motion is to uphold the Order of Abatement and the assessment of costs.

Vice President Walker stated yes.

President Lee stated Commissioner Murphy seconded it.

Secretary Harris stated there will be a roll-call vote on the motion to uphold the Order of Abatement and accept the assessment of cost.

Vice President Walker made a motion, seconded by Commissioner Murphy to uphold the Department's Order of Abatement and assess and collect the fees on the assessment of cost.

The motion carried unanimously.

F. GENERAL PUBLIC COMMENT

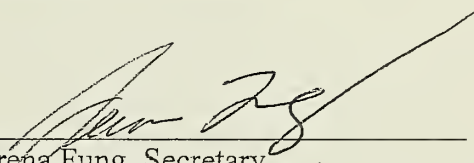
Secretary Harris called for general public comment? Seeing none, we can move to adjournment.

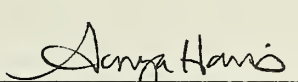
G. ADJOURNMENT

Vice President Walker made a motion, seconded by Commissioner Murphy that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 10:15 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, February 15, 2012 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
Aired Live on SFGTV Channel 78

GOVERNMENT
DOCUMENTS DEPT

FEB 10 2012

AGENDA:

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The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. ELECTION OF OFFICERS: PRESIDENT AND VICE PRESIDENT.

C. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

D. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on May 18, 2011, September 21, 2011, November 16, 2011 and January 18, 2012.

E. CONTINUED APPEALS: Order(s) of Abatement.

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue.,
 San Francisco, CA 94122

Appellant's Agent: Alla Dubrovsky, c/o Heather Wolnick, Tour-Sarkissian Law Offices,
 211 Gough St., 3rd Fl., San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

Note: On November 16, 2011, the AAB voted to continue the case for 90 days to allow parties additional time to resolve the matter.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

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Mel Murphy, Commissioner

Criss Romero, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Francesca Gessner, Deputy City Attorney (415) 554-4762

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

p:aab\agenda\2-15-12.ts

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Abatement Appeals Board - 1660 Mission Street, 3rd Floor - San Francisco, CA 94103-2414

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ABATEMENT APPEALS BOARD

Wednesday, February 15, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED April 18, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for February 15, 2012 was called to order at 9:00 a.m. by President Lee. The roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Frank Lee, President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Mel Murphy, Commissioner
Myrna Melgar, Commissioner

ABSENT: Vice President Debra Walker was excused

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVES PRESENT:

Edward Sweeney, Deputy Director of Inspection Services
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Francesca Gessner, Deputy City Attorney

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B. ELECTION OF OFFICERS: PRESIDENT AND VICE PRESIDENT.

President Lee proposed continuing this item until the next Abatement Appeals Board meeting when they have the full seven members present and asked if they agreed and if there was a motion.

Public Comment: None.

Commissioner Hechanova made the motion, seconded by Commissioner Murphy, to continue the Election of Officers to the next meeting.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Melgar</i>	<i>Yes</i>

The motion carried unanimously.

C. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

E. CONTINUED APPEALS: Order(s) of Abatement

President Lee asked that Item E be heard before Item D, the Approval of the Minutes. The Board members agreed. Secretary Harris stated they will come back to Item D.

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

- **Appellant's Agent:** Alla Dubrovsky, c/o Heather Wolnick, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd Floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

Note: On November 16, 2011, the AAB voted to continue the case for 90 days to allow parties additional time to resolve the matter.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

President Lee stated just to refresh Commissioners' memory, in November, they did not hear the case. They did not hear any presentation because he believes the Appellant came before them and asked them to continue this matter for three months and they granted that continuance. At this point, he would like to ask the Appellant if she wants them to hear this now.

Christine Sarkissian, Attorney for the Appellant stated yes, she is here to ask for a further continuance for three months, the reason being that the parties are in legal negotiations. In fact,

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Melgar</i>	<i>Yes</i>

The motion carried unanimously.

D. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on May 18, 2011, September 21, 2011, November 16, 2011 and January 18, 2012.

Commissioner Murphy made a motion, seconded by Commissioner Hechanova to approve the minutes for the meetings held on May 18, 2011, September 21, 2011, November 16, 2011 and January 18, 2012.

Secretary Harris stated that on the last page of each set of the minutes, it is missing a header for a General Public Comment. She suggested the motion could be amended to request that change and to add that heading of General Public Comment.

Commissioner Murphy made a motion, seconded by Commissioner Hechanova, to approve all four sets of minutes with the amendment of adding a header for General Public Comment to each set of minutes.

Public Comment: None.

The Commissioners voted as follows:

<i>President Lee</i>	<i>Yes</i>
<i>Commissioner Clinch</i>	<i>Yes</i>
<i>Commissioner Hechanova</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner Murphy</i>	<i>Yes</i>
<i>Commissioner Melgar</i>	<i>Yes</i>

The motion carried unanimously.

they have gone to arbitration at JAMS, and the decision of the arbitrator will be forthcoming very soon that will resolve all the problems that is the underlying issues relating to the abatement.

President Lee asked when you said forthcoming, how much time? Attorney Sarkissian stated they have gone through the arbitration and finished the arbitration. The arbitrator has solicited statements from the parties and briefs. The briefs are on the way to the arbitrator. It is anticipated they are hoping this will be resolved earlier than three months, but they are asking for three months because, as you may know, things that the arbitration do not go as fast as they anticipate some times.

Commissioner Murphy asked is this binding arbitration? Attorney Sarkissian stated yes, it is. It flows from a settlement the parties had reached over a year ago that broke down, and then, per agreement, the parties went to an arbitration before the same mediator, and it was a three-day arbitration with testimony and all that; so, yes, it is binding.

President Lee asked are there any other questions, Commissioners? If not, he would like to ask the Department if they have a position on the request for another three months?

DBI Inspector Hinchion stated if the affected neighbor is agreeable to that, then the Department would be ok with it also.

Public Comment: Rubin Becker stated he is the attorney for the adjacent lower lying neighbor at 1737 - 12th Ave. He stated they had a binding arbitration and there is going to be two sets of briefs. They are submitting opening briefs next week, and then they will have a closing brief responding to each other's opening brief, and it is before Judge Snowden, arbitrator for Jams, and he thinks that it would be economical and useful if the Board would continue it for the three months. He thinks three months is probably the outside, but they have been here before, and there are four sets of counsels and insurance companies and JAMS, so they would join in the request of continuance for Alla Dubrovsky.

President Lee asked if there was any other public comment and stated there is a motion on the floor to grant another continuance for three months.

Commissioner Murphy made a motion, seconded by Commissioner Clinch, to continue the matter for three months because of the forthcoming scheduled binding arbitration proceeding.

F. GENERAL PUBLIC COMMENT

Secretary Harris asked if there is any general public comment in the audience? There was none.

G. ADJOURNMENT

Secretary Harris asked if there is a motion to adjourn?

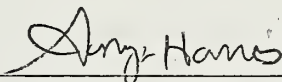
Commissioner Hechanova made a motion, seconded by Commissioner Murphy, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 9:20 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, April 18, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. ELECTION OF OFFICERS: PRESIDENT AND VICE PRESIDENT.

C. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

D. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on February 15, 2012.

E. CONTINUED APPEALS: Order(s) of Abatement.

1. CASE NO. 6747: 1117 Geary Boulevard

Owner of Record and Appellant: Emeric-Goodman Associates, P. O. Box 2210,
San Francisco, CA 94126

ACTION REQUESTED BY APPELLANT: 1.) Appellant requested that the Order of Abatement be reversed and Assessment of Costs be waived. 2.) Appellant requested that DBI issue a permit to confirm the legality of the deck pursuant to the plans and calculations of structural design engineers based on a valuation of no more than \$5,000.00 and without any additional penalties or fees.

On **September 21, 2011**, the AAB voted to continue the case for 30 days to allow DBI staff to inspect the deck and to review the tape or transcript of the Director's Hearing. On November 16, 2011, the AAB voted to continue the case for 60 days to allow the parties additional time to resolve the matter.

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Kevin Clinch, Commissioner	Teresita Sulit, Recording Secretary (415) 558-6267
Warren Mar, Commissioner	
Angus McCarthy, Commissioner	
Dr. James McCray, Jr., Commissioner	CITY ATTORNEY'S OFFICE REPRESENTATIVE
Myrna Melgar, Commissioner	Jana Clark, Deputy City Attorney (415) 554-4634

On **January 18, 2012**, the AAB voted to continue the case for 90 days to allow the parties additional time to resolve the matter.

2. CASE NO. 6753: 554 Fillmore Street

Owner of Record and Appellant: Megan Furth Academy, 2445 Pine Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and Assessment of Costs.

On **November 16, 2011**, the matter was heard and continued by law to the next AAB hearing date.

On **January 18, 2012**, the AAB voted to continue the matter for 90 days to allow the parties additional time to resolve the matter.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

F. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6757: 30 Beaumont Avenue

Owner of Record and Appellant: Tonja Herd & Barron Flemming, 1004 Magnolia Street, Oakland, CA 94607

ACTION REQUESTED BY APPELLANT: To waive the Assessment of Costs.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6758: 130 Beulah Street aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Rogers, 132 Beulah Street, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: A moratorium regarding the existing two (2) illegal units.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

G. RE-HEARING REQUEST:

1. CASE NO. 6756: 423-425 Noe Street

Owner of Record and Appellant: Frear S. Schmid, 7585 Valley Ford Road, Petaluma, CA 94952

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6756 previously addressed by the Abatement Appeals Board on January 18, 2012.

Note: On January 18, 2012, the AAB voted to uphold the Order of Abatement and impose the Assessment of Costs.

Testimony, deliberation and possible action to grant or deny the Rehearing Request.

H. GENERAL PUBLIC COMMENT

I. ADJOURNMENT

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NOTICE OF MEETING

Wednesday, May 16, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

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ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

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Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

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Debra Walker, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney (415) 554-4634

D. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6759: 575 Shotwell Street

Owner of Record and Appellant: K. Hendry & Liana Tahir, 131 Chester Avenue,
San Francisco, CA 94132

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and
Assessment of Costs.

**Testimony, deliberation and possible action to uphold, modify or reverse the Order
of Abatement.**

E. GENERAL PUBLIC COMMENT

F. ADJOURNMENT

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SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, June 20, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on April 18, 2012, and May 16, 2012.

D. CONTINUED APPEALS: Order(s) of Abatement.

1. CASE NO. 6758: 130 Beulah Street aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Roberts, 132 Beulah Street, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: A moratorium regarding the existing two (2) illegal units.

Note: On April 11, 2012, Appellant requested that the matter be continued for thirty days. The Department of Building Inspection had no objection to the continuance. On April 18, 2012, the AAB voted to continue the matter for thirty days.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD

Kevin Clinch, President

Myrna Melgar, Vice President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

DEPARTMENT REPRESENTATIVES

Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142

Sonya Harris, BIC Secretary (415) 558-6164

Teresita Sulit, Recording Secretary (415) 558-6267

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney (415) 554-4634

E. GENERAL PUBLIC COMMENT

F. ADJOURNMENT

p:aab\agenda\6-20-12.ts

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

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ABATEMENT APPEALS BOARD

Wednesday, June 20, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED September 19, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, June 20, 2012 was called to order at 9:00 a.m. by President Clinch. The roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President
Myrna Melgar, Vice-President
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner
Dr. James McCray, Jr., Commissioner
Debra Walker, Commissioner

Sonya Harris, Building Inspection Commission Secretary

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D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Inspection Services and Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
Andrew Karcs, Senior Housing Inspector
John Hinchion, Acting Senior Building Inspector
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on April 18, 2012 and May 16, 2012.

President Clinch said they did not receive those minutes and Secretary Harris said they made a motion to continue.

D. CONTINUED APPEALS: Order(s) of Abatement

In the beginning of the proceeding, the Department presented its case first and had seven minutes, followed by the Appellant and then there were three minutes for rebuttal time for both sides, and lastly public comment.

1. CASE NO. 6758: 130 Beulah Street aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Roberts, 132 Beulah Street, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: A moratorium regarding the existing two (2) illegal units.

Andrew Karcs, Senior Housing Inspector, Housing Inspection Division, said this is Complaint #200857189 and the case was referred from the Building Inspection Division on May 8, 2008. The inspection of the premises was made on May 16, 2008 and the Notice of Violation was issued May 27, 2008. There was a final warning letter that was sent to the property owner on September 16, 2011 for non-compliance.

The first Director's Hearing was scheduled and heard on October 20, 2011. At that time after hearing testimony, the Hearing Officer issued a 30-day continuance and the second Director's Hearing was held on December 1, 2011. The Hearing Officer again took testimony from the occupants who had complained about the conditions of the illegal units, and after hearing the testimony, the Hearing Officer ascertained that there were no building permits taken out at that time and issued an Order of Abatement on the property.

The Order of Abatement was issued and posted on the building on February 22, 2012 and the complainant then filed an appeal on March 8, 2012. The property owner requested a moratorium on these type of units. Inspector Karcs presented aerial photographs to show the property in question on the Notice of Violation. He indicated the frontal view of the property and the path of travel towards the illegal units which was clearly marked A and B. The front was marked A, and B was towards the back.

The Notice of Inspection revealed hazardous conditions, a lack of smoke detectors, and basically what the property owner has created from a two-unit building to a four-unit apartment house. There is lack of smoke detectors, hazard warning and hazardous plumbing. Staff requested the members of the Board to concur with the Hearing Officer on the Director's Hearing and uphold the Order of Abatement.

Inspector Karcs said the units were occupied, and staff is receiving continued complaints from the occupants regarding the conditions of the units. His current notes indicated no permits have

been filed to correct the Notices of Violation to either remove or legalize the units. The nature of the complaint was the condition of the habitable spaces, the lack of smoke detectors, etc.

The legal use of that building was a two-unit building with a R3 rating. There was no second means of egress. When the owner converted this into a four-unit apartment building, there was no second means of egress and the only path of travel was through that side walkway and that is the only way in and out. Although Inspector Karcs had not been to this property, he stated while you can go forward or backwards in that alley, which was the only one means of egress and the other means of egress was at the rear of the unit.

There were no separate meters from PG&E for gas, illegal electrical, etc. for the two illegal units. There were only two units for two legal meters, electrical and gas. The allowable zoning for the two-unit building was R3 area and up to two units. In order to legalize these units, the tenants would have to move out in order to correct the electrical, wiring, plumbing, etc.

Commissioner Walker received complaints from four prior tenants, as of February, March and April of this year. People had been removed, and the units were re-rented as early as spring of this year. She seemed curious that it was not a continuous tenant and the units were re-rented while there were still violations.

Inspector Karcs said the property owner was cited for illegal creation of two units and Deputy Director Sweeney said they were cited for both the extra two units and the illegal construction.

Rosemary Bosque, Chief Housing Inspector, said the Department of Building Inspection cannot cite for violations of the Planning Code. They were dealing with the fact that it had now been four years since the Notice of Violation had been issued and they had received many complaints from occupants of this building. As to the question of zoning, the property owner had not yet filed a permit within four years to explore whether anything could be legalized as far as the 4-unit building but what they had was an apartment house without any kind of electrical, building and plumbing permits, and a significant amount of complaints from occupants of the building.

At that time Ms. Bosque was the Hearing Officer and they had very unhappy individuals who occupied a legal and illegal unit in this building, and the fact that this property owner was allowed to continuously re-rent these locations without the City doing anything about the legality of creating these units. She wanted to make sure the Board understands what was before her as a Hearing Officer and she considered it very serious. The property owner has not filed a permit in the last four years, and at the Hearing said that she did not intend to file a building permit.

Several months after the Hearing of December 1, 2011, the owner did not file a building permit and had there been an appropriate discussion to investigate the legalization of these units, not necessarily as dwelling units, but possibly forced occupancy. There has been no attempt and staff is concerned about the occupancy, without any building, electrical or plumbing permits to legalize the safety of the property.

Kathryn Roberts, Appellant, stated there were a lot of factual misrepresentations, and she understood the delicate position the City was in. There was some dry rot in the front unit that required partial removal of the wall, which she complied with permits and full inspections.

Ms. Roberts said the building was probably built sometime around 1904 and there were possibly more permits that were destroyed in the great fire of 1906. She had the wiring checked and it was totally safe. She had lived in the upstairs unit and she would not live there if it were unsafe. She had installed smoke detectors and carbon monoxide detectors. On the day of inspection of the property she did not realize the smoke detector was in the wrong place in the kitchen, but she has moved it and installed many more and believed that part was totally up to Code.

Ms. Roberts said there was a second means of egress for both units and Inspector Karcs admitted he had not been to the property. Regarding the two front and back units that were on the ground level with big windows people could jump out in case of an emergency, and that was not legal egress but they had more egress than she had on the third floor in her legal unit where she would be stuck if the building caught on fire because there was no way down except to jump.

Ms. Roberts said these units were not a safety issue and the people residing there now have not complained. There were two extremely vindictive tenants who had not lived in those units and were angry at her, because they were not allowed to have aquariums and for other unrelated reasons and these people had made her life miserable. When they were there, they had reported her to numerous City agencies, including SFPD. They reported her for being drunk and disorderly, accused her roommate of battery and lied about everything. They had retaliated against her for not concurring to their demands.

Ms. Roberts said it was important to her to provide safe, affordable, habitable housing in a great neighborhood that she has lived in for the last 35 years. She did not build these units and did not know they were illegal but she knew that was her responsibility. They were sold to her as unwarranted and not unpermitted. As far as she had known, they had been continuously occupied for possibly up to 100 years.

Ms. Roberts said it was not an emergency with the exception of a couple of people who had disputes with her and it ultimately became an issue the Board had to deal with. Those people not only moved but they instilled false rumors in the other tenants that the building was unsafe, mostly from complaints that they themselves called in.

Ms. Roberts said as a matter of fact, she re-rented the units within 24 hours because they were in such demand. She cannot afford not to rent these units and there were four of them in a maximum three-unit zone. Also, she cannot legalize them or afford to evict her tenants and she never stated to Inspector Bosque that she had no intention to submit a permit.

Ms. Roberts said she did not know what to do about this. The only two options that the City gave her were both completely unviable to her. She had filed for Chapter 13 bankruptcy last year and seriously cannot even afford to live in her building even with this rental income.

Ms. Roberts said this old 1904 building had constant maintenance issues. The whole rear deck

and stairway, a two-story structure on stilts which was also built without permit by the previous owner, had dry rot and termites, and she replaced the entire area and rebuilt it at a cost of \$135,000. From November to February, she had to come up with \$135,000, and it was done without permits because the house had apparently rotted which was potentially hazardous at any time. There could be a tremor and it may collapse and someone might get hurt. Ms. Roberts stated that for her to now employ an army of experts, planners, architects, evict her tenants, and lose rental income would be a problem as she was not wealthy and cannot afford to do this.

Ms. Roberts said if an Order of Abatement was issued on her building it would impact her even further because the bank would not fund this project and this would place her in a predicament. She went to the Board of Supervisors and Christina Olague is her district representative: They were working on a legislative remedy to this, given that there were upwards of 40,000 illegal units in the City right now, it seemed like the only rational approach would be a legislative remedy. She was not the worst case scenario in the City because she took great care and loves her building.

Commissioner Walker said this was originated in 2008 and the Board is limited as to what they can do with illegal units and the owner had an option to legalize them or get rid of them. She said the scenario with the tenants, as she sat on the Board for almost 10 years, she had never received so many complaint calls from the tenants and it especially bothered her when Ms. Roberts re-rented these units when there were active violations on them.

She felt the owner took advantage of this situation, and felt bad that Ms. Roberts was in this situation, but they were obligated to make sure the units were safe and livable that were built correctly and not an imminent danger. They are limited as to what they can do as an Abatement Appeals Board but she was very upset that she re-rented the units as early as spring of this year, and apparently had not done anything to fix the problem. The main issue here was about whether they were legal units and they were not. If Ms. Roberts cannot afford to keep the building in code compliant condition, she needed to look at that situation for herself.

Commissioner Mar said Ms. Roberts was not the original owner of this building, but even when it was purchased, as he sat in the seat as a landlord that he owned property in San Francisco as well. When they talked with other property owners that would set off an alarm because unwarranted units were considered illegal. Ms. Roberts' realtor should have explained to her the meaning of "unwarranted." She purchased a two-unit and not a four-unit building.

Ms. Roberts said this was her first property and she has never been through this before. Had she known about unwarranted buildings she would not be in this situation. She paid utilities for the entire building and PG&E charged four times as much because of the tier system as they perceived the building as only one person using that power when actually there were three units and the common areas, and she paid over \$700 a month for this small building.

Ms. Roberts said she never understood why people were forced to destroy these types of units when nobody benefitted because it was not affordable for homeowners to stay in their homes and for tenants to find places to live. She placed an ad for the last apartment and had four dozen calls a week and believed there was an enormous demand for exactly this kind of housing in the city.

Ms. Roberts said she understood the Commission's concerns about safety and the inhabitability. She personally believed that the situation with her building was there had been a vendetta against her by a few individuals that had absolutely nothing to do with these issues. She believed that her building was probably one of the safest buildings in San Francisco and those concerns were overstated and they needed a legislative remedy to this.

Ms. Roberts said it was a huge problem and she was not alone. To single her out because of the complaints, the Board had not addressed this systemically, which was why she went to the Board of Supervisors. She took this matter further with the Mayor's Office and whatever was needed to expedite this because it needed to be addressed. The Commission was not blamed but the Board cannot address this issue as they act as a middle man and not under their jurisdiction, but to her it was a very serious issue.

Both units were unwarranted one-room units and the rent was under \$2,000 a month and utilities were included for each unit. Ms. Roberts said she had received estimates of \$250,000 to legalize them and it would have taken a lifetime to recover all her costs. Her contractor friend and her architects both gave an unofficial estimate of \$250,000.

Vice President Melgar asked the Department what could be done with this situation. She had been sympathetic to the issue of prioritizing code enforcement and how it was done if it were solely based on complaints or if the landlord was a bad actor. She wanted to know more about what happened at this point in the process and believed there was a legitimate public policy issue here.

Commissioner Melgar said there were about 350,000 units in San Francisco and upwards of 50,000 units that were illegal. In her neighborhood almost everyone had an illegal unit. It was a political third rail in San Francisco and required further action. An Abatement Appeal might not resolve it but they needed, as a body, to explore what staff recommended.

Commissioner Melgar wanted to know more from Inspector Bosque in terms of type of permits that allowed Ms. Roberts how to correct some of these issues. She trusted Inspector Bosque and the guidance the Department can offer Ms. Roberts. The illegal units were not resolved during this appeal, but the Department had helped and guided her through the permitting process so that this illegal issue could be resolved.

Inspector Bosque said she had been with the City and County of San Francisco, Planning and the Department of Building Inspection, which dealt with this illegal unit issue for about 26 years. The problem in this case was the property owner had not yet filed a permit or submitted any plans; and from the pictures, it was clear that although she alleged that these units had been here since 1906, they had different types of construction much more recent than that.

Ms. Bosque said when she purchased the building, the seller would have given her a 3R Report that clearly indicated it was a two-unit building. There were no building permits filed or any plan submittal, and the discussion of whether Planning may approve this as a floor of occupancy had not continued because that process had not been initiated.

Ms. Bosque said it was unusual for cases that went through appeal and the owner had not

attempted to file a permit. If a permit with plans were filed, there would not be a Hearing because they would have allowed that process to go through so that could be analyzed. Ms. Roberts talked about the smoke detectors and from her description; she talked about battery smoke detectors.

Ms. Bosque said pursuant to the Housing Codes, a 4-unit R2 occupancy required a hard-wired smoke detector. When Ms. Roberts converted a two-family dwelling to a four-unit building, these types of things were not there. As Senior Inspector Karcs indicated, there were no building, electrical or plumbing permits for all the work that was done to create these units. Although Ms. Roberts believed she had been commended for getting a permit to deal with the dry rot, she needed to obtain a permit for further discussion and analysis before they can continue to advise her further. She recommended Ms. Roberts to submit a set of plans and a permit to update the record so this can be explored further.

Commissioner Walker said in the past, this was an issue that the Commission and several supervisors had dealt with. It was a third rail, and they had not started as far as a discussion about legalization because of some of the issues. In this case there was a history of tenant complaints and that was her concern.

Commissioner Walker said up to and included lost power, lost heating ability, and to withheld security deposits. Those were the things that she was less sensitive in those areas and less compassionate because she felt that they were illegal units, and the tenants had been taken advantage of and that was not what they were here to move forward. She appreciated that this had been a challenging situation but this happened since 2008, and there had been no progress and no excuse for it.

Ms. Roberts said the current tenants have not complained, and there was no loss of power. The last owner who lived in the illegal unit for 20 years had installed a very high wattage light bulb. She did not realize why the fuses were out, but she changed them about six years ago and never had a problem.

People complained when they left because they spilled something on the rug and they refused to compensate her for their damages. They had taken advantage of the situation and she attested that it was totally irrelevant to the condition of these units. Every month she makes less than the money spent on her building and had owned it for nine years and it was not profitable.

Any profit from these rental fees went back as improvements to the building, and it was a gorgeous property. She so proud to have owned and lived there and hoped this issue had not been troublesome. It bothered her and will do her best to get the permits and plans. It was not affordable at this time, but if there was an easier way, it will be done. She was a responsible landlord and apologized that people complained about her but it was not because the building was unsafe.

James Dyer said he was a happy tenant of the illegal unit and lived there for six years. In regards to the he said/she said, he was very sympathetic with his landlady because she told the truth. There were people who moved out and did serious damage to the floors. They went through

Small Claims Court and eventually ended up in a higher court, and Ms. Roberts won that and those people were very upset. This whole merit of taken the security deposit was to repair the floors that they damaged. He attested that he was aware of the situation and he had taken the photos of the damage.

The person who contacted Commissioner Walker had contacted practically every City Department. This former vindictive tenant had nothing better to do with his time. He contacted the Police and accused Mr. Dyer of beating him on the premises and this accusation was ridiculous as he was a lifelong, non-violent Quaker. He went through some criminal proceedings but everything was dismissed as it had not happened.

Ms. Roberts failed to mention that when the police officers arrived, they found her sober and coherent. This vindictive tenant was very troublesome and also had complained that Ms. Roberts took the money or she was bad for tenants. This was untrue as he had lived there for 6 years and this building was considered one of the nicest places in San Francisco.

The illegal units on the ground floor had been there for awhile. He believed there was nothing wrong with them and there was no danger since he resided there. He did not consider himself an expert, a contractor or an inspector, but when the landlord found something was wrong, she immediately fixed the problem and that should be taken into consideration.

Mr. Dyer resided in the upper 2-unit of the building. The alleged tenant who made the complaint no longer resided there and there were two of them. They worked together but one of them had a job, and the other stayed home and made dubious phone calls.

Deputy Director Sweeney said the fees were based on the fee amount of the permit itself. When the Plan Check staff ascertained that the cost of legalizing this unit, if the cost of construction was \$50,000, \$75,000 or \$100,000, but it was incumbent upon Ms. Roberts to file a building permit with a set of plans, so that the plans could be examined and determined a fair price based on the permit value.

Mr. Sweeney said the plans were initially submitted through the Building Department, and subsequently routed to Planning, Fire, PUC, DPW and returned to Building. The Planning and the Building Departments had no control on the possibility of an R1 building in that neighborhood.

Inspector Bosque said if the Zoning Department disallowed the legalization of four units, perhaps it permitted the legalization of three, or established that as a floor of occupancy where she had individuals who were boarders. She believed the last individual was actually an occupant in her unit so maybe she had that as an opportunity in that lower floor issue which was to legalize that unit as a floor of occupancy.

Commissioner Walker said this had been ongoing since 2008 and she preferred that this went through the process of legalize what could have happened, but the Order of Abatement was appropriate, and tended to support the Order of Abatement and allow a period of time to complete that to either legalize them or get rid of them. She also wanted to deal with the tenants

that continue to be affected by this. If there was a Notice of Violation on these units, it should not be occupied and continuously rented. She made a motion to uphold the Order of Abatement and maybe a few months for the processing, whatever seemed reasonable to the Deputy Director for a period of time.

President Clinch said given the complexity of the process, perhaps something as much as six months and Commissioner Walker agreed and to uphold the Order of Abatement. Mr. Sweeney suggested 30 days to complete a permit application with plans for 60 days then she would have four years to think about it and perhaps six months for plan approval and 9 months to complete work. It was up to the Commission, but the time frame be shortened and the plans submitted with the permit.

Commissioner Lee said 30 or 60 days was insufficient time to obtain plans for this. He felt sorry Ms. Roberts was in this situation. Had Ms. Roberts known that their inspectors found two things currently wrong with her building? The construction was not permitted and it was never zoned to allow her to use four units in the building. A permit satisfied both items and the first item was legalized the four units, if she chose to legalize the four units passed Planning and that was what needed to be done because that was out of their jurisdiction.

The Department's decision will be upheld and allow Ms. Roberts up to 3 to 6 months for plan submittal to Building and then routed to Planning for review. If no plans were submitted within that time period an Abatement will be filed. In the mean time, the tenants in the lower units will have sufficient notice that it was necessary for them to vacate when the construction begins. Ms. Roberts said the tenants were content and wanted to stay since it was difficult for them to find anything.

Commissioner Walker moved to uphold the abatement and suggested 60 days to submit plans and did not agree with 6 months.

Attorney Clark read Building Code Section 105a.2.a.2 regarding Life-Safety Hazards. Ms. Clark said an Order could be modified but the Board should consider the immediate protection of the public in the event that they found any life-safety hazards before making a decision.

Commissioner Mar said they are back to 60 days for the Life-Safety which they heard from the Department the fire alarm had to be hard-wired and the egress was dealt with and some other things but those were two of his concerns.

Inspector Bosque clarified that because of the extended amount of code enforcement time needed for this particular case, the Department was currently at \$2,157 and asked for the Board's direction on how they determined that into their Notice of Decision. She wanted her staff to understand that if Ms. Roberts was held responsible for that or if she filed a timely permit. Commissioner Walker said they used time and the fees would apply. If a permit were filed, the fees associated with the abatement procedure would be waived.

Inspector Bosque said Ms. Roberts had not yet been billed \$2,157 because they wanted to hear from the Commission on this issue but at an hourly rate based on the code changes that this body

and the Board had approved. Their question depended on what the Notice of Decision said. If she filed the permit, will they waive or charge her the full amount? This case was so extraordinary because there were no permits filed and that was the problem.

Inspector Bosque said according to Chapter 1A of the Building Code, the fees were due and payable when Ms. Roberts filed a permit. The question was the Board had the power to waive that in part or whatever and she wanted direction from them in their decision but she made it clear to them so that they can all move forward.

Commissioner McCarthy wanted a compromise on the fees to help Ms. Roberts. In reality, it had taken more than 90 days to get a proper set of drawings. As part of the compromise, he wanted the fee reduction so that this guided her in the filing process with the Department so they can move forward and given Ms. Roberts the chance to resolve this issue.

Commissioner Walker said there was no activity since 2008 and Ms. Roberts continuously rented these units. As much as it was a difficult situation, she suggested that Ms. Roberts would assure them by a permit filed in 60 days then it can be discounted. If not, it was due and payable and that was the problem. It was a he said/she said scenario, but there were numerous complaints on issues that were brought up. At this point, she wanted to resolve this. If there was an incentive that assured them that the permit had been filed and applied the reduction to \$1500 and if not it returned to initial cost and the abatement will be applied.

President Clinch said he upheld the abatement, the Life-Safety issues repaired within 60 days and allotted Ms. Roberts from 3 to 6 months so that there would be discussion about obtaining a permit to resolve the illegal units with Planning and the assessment of cost. Commissioner Walker said she preferred three months instead of six months to obtain a permit application applied only to Planning to legalize them for permit submittal for three months with full legalization and nine months for the completion or six months, assumed 3 months in Planning. If Planning delayed it, they can revisit this, provide an extension and change the timeline, if there were one.

Vice President Melgar clarified the motion on the floor, if they upheld the Department's decision the property owner had 60 days to correct the Life-Safety decision and six months to get the permits into Planning. Commissioner Walker said three months for permit submittal to Planning. Vice President Melgar said it meant that Ms. Roberts had to obtain the actual plans and pay a contractor \$6,000 for drawing up plans. She was unsure about three months but she deferred to other opinions. She asked Inspector Bosque what happened if the Department's decision was not upheld?

Inspector Bosque said if the Board did not uphold then the Order cannot be issued and they would have known they had individuals occupied in illegal units with no building permit, and the staff and the Commission were liable if it happened. She recommended that, if the Board required the property owner to file the building permit within three months and responded to Planning Department's inquiries within that period then it was more than a filed permit with plans and no response. If Ms. Roberts complied within the three months, the Board had the

incentive of reduced assessment of cost that accrued to that date by 325%, which helped recover some of the cost she needed for the plans.

Vice President Melgar alluded that when Ms. Roberts obtained a permit that was beyond her control, and when processed, she had diligently went through that process to legalize, remove or create a floor of occupancy, and she needed to respond to any request for additional plans or information from DBI, Plan Check, Fire and the Planning Department and that could be written into the decision as well. She was given the incentive to obtain that permit and processed within three months, because people had occupied those spaces.

Commissioner Mar concurred with the last recommendation on some of the clarification given by the staff. In reviewing this case, this was not that rare. Although it seemed contentious he said/she said scenario, he recalled that most cases before the Abatement Appeals Board usually came from a tenant or a neighbor.

Their main concern was if their inspector had inspected the building and reviewed the codes and it was their job for code enforcement which was basically similar to the law enforcement of police officers. They inspected and assessed the situation and if there are any violations. He believed that for that reason he was compelled to agree with the staff and upheld the law, the Order of Abatement, because the Board had jurisdiction. In every case he heard since he had been here were some neighbors usually besides a building tenant but the Board had no jurisdiction. They were not interested if people were friendly with their neighbors and that was none of their business.

Ms. Roberts said that if an Order of Abatement were placed on her building and with the Commission's added costly expenses that she was required to do, her loan would not be approved because it affected her credit, and she cannot get a home equity line. It created an enormous financial hardship for her.

Commissioner Walker said the Abatement will be held in abeyance if these things were done and it will be held and not filed. It will affect Ms. Roberts's title if she did not do what she was supposed to do. They upheld the Abatement with the requirement that Ms. Roberts fixed the Health-Safety issues in 60 days, and filed a permit for the Planning issues within three months, with possibly a year to resolve the situation. If there were unforeseen problems, they can agree to modify the time period if nothing else but it needed compliance and that was their point.

President Clinch said they moved very close to an agreement on the Commission, and the sticky point of six months was more than fair and some felt that three months was more appropriate. Commissioner McCarthy said they wanted to be fair about this. Six months and he understood the concerns of Commissioner Walker but it will take more than three months on the fire exiting issues. Commissioner Walker said Attorney Clark said it was only 60 days and that was the issue.

Commissioner McCarthy said Ms. Roberts can definitely file the permit, but he cannot see that being done in 60 days for the actual work and completion. There was a lot more to that than what was said especially the exiting issue towards the back. He wanted clarification that, if she

had 60 days to file the permit, she should not be held accountable if the work took five months to do.

Attorney Clark said on the code section with regard to Serious and Imminent Hazards to the Life, Health, or Safety, any Order of the Building Official shall be provided for the immediate protection any modification of the Order of the Building Official shall be provided for the immediate protection to the public and the work to correct each such hazard commenced 30 days and completed within 90 days.

With respect to violations which were not found by the Abatement Appeals Board constituted a Serious and Imminent Hazard, any decision modified the Order (and she paraphrased here), provided that the work repaired such violations commenced within 60 days and completed by 90 days within a reasonable time, not exceeding 18 months. It was the conditions that the Commission found that constituted a Serious and Imminent Hazard to Life, Health, and Safety of any person that had started within 30 days and completed within 90 days. It was conditions which were Life, Safety and Hazards but not found to be serious and imminent that you had to begin within 60 days and the work not exceeded 18 months.

Deputy Director Sweeney said the safest thing to say was they did not know what was on the other side of the wall or heard from any experts and Ms. Roberts did not bring contractors, engineers or architects. This was a four-year-old case and probably should have been done prior to coming here.

Commissioner Walker was willing to work on the timeline of doing this complete project, but the problem around egress was that if there was a fire and people died, it was on them. There are people dying, but it might not happen, but that was why they made specific mention of it in the code. As a tenant representative on this Commission, she personally believed the lack of egress was a serious issue and maybe the other stuff can be held and given more time, but that was problematic.

President Clinch said 30 days to commence work and 90 days to complete. Attorney Clark said that is correct with respect to Life-Safety and hazards found to be a serious and imminent hazard to life, safety and hazard to any person and/or structure or property and they are mainly concerned about the people.

President Clinch said without being the experts, they went off of staff's recommendation and it seemed like they had erred on the side of caution and that was his feeling as far as the Life-Safety and Hazards and agreed to the 3 and 4.5 months on the illegal unit issue.

Vice President Melgar clarified their decision that egress was an imminent hazard and Ms. Roberts had 30 days to fix it. Attorney Clark said from 30 to 90 days to completion.

Vice President Melgar said in order to process and file a permit, hire a contractor within 30 days, or not rent the vacant rental units to eliminate imminent risks. They decided that those tenants will be evicted or required completion in 30 days. They ordered this landlord not to rent this unit or occupy it and it weighed heavily on her to place somebody in a hazard.

Commissioner Walker sympathized with the tenants in the building but this tenant and possibly others recently resided there while the Notice of Violation was active. At some point, the Health and Safety issues needed to be dealt with. She had conflicts about getting rid of units but a bigger conflict with the potential for injury to people in non-compliance of codes. This was a difficult situation but it had been inactive 4 years ago since 2008.

Inspector Bosque said in addition to discussion about electrical, plumbing and things like that, if she hired a contractor to do some very minor investigation of what may be back there, they may have assured them that there was no imminent hazard, but they have not reached that point with this property owner. If she understood what needed to be done and hired a contractor, perhaps as far as imminent hazard can be addressed. The problem was Ms. Roberts was unable to do a lot of work under a separate permit if she did not legalize it. It was complicated but if the contractor knew what were the standard practices, etc., and provided them more information, they can determine whether these units would be in an interim basis occupied or not. She needed that done through a contractor because they were not allowed to inspect an open wall for inspection and through some permits, she could do that.

Commissioner Lee had a problem with that. He felt it was inappropriate if it was invisible that was not an imminent hazard and they required the tenant to open a wall to prove that it was an imminent hazard. If the imminent hazard were visible, she should be cited and enforced them to prove that the wiring on her walls were an imminent hazard.

Inspector Bosque said they talked about wiring placement without any kind of permit. Commissioner Walker said they did not know what the imminent hazard was and knew that egress was an imminent hazard. If the electrical wiring were a hazard that would, under the code, be included. If it were not, then it goes with the later permits, but it needed review.

Vice President Melgar said at this point that was not the process but they needed to see it and that was part of the problem. She needed to go through the process and deal with the issues and this was just the law. Although it might seem unfair, and emotionally she related and felt she was attacked by people that seemed a little off their rockers, but that was beside the point. There was a set of laws that everyone followed and she needed to deal with the process.

The Department tried to work with her and she needed to comply with what was asked. She wanted to hear from Inspector Bosque what exactly meant in terms of getting a contractor in there. If it meant that they voted on the motion currently on the floor, given her 60 days and the benefit of a doubt that it was not an imminent hazard, or if they went with an imminent, detailed what that meant in terms of the process in both ways?

Inspector Bosque said the language in 1a of the Building Code, talked about a serious or imminent hazard, it meant the degree of which they typically would issue an emergency order or something where they thought it was an imminent hazard. Since Ms. Roberts had no plans and information or the benefit of plan checking, if they had a set of floor plans, some information from a contractor, and inspected her smoke detectors and the egress, they might be considered and this Board had, in the past, fashioned some interim remedies in situations like this and she had done this in the past and she can do this now, but it required more information from this

property owner. She needed to file a set of plans, hire an electrical or plumbing contractor to inspect this and file a permit to show that at least those components are safe while she went through the process.

Vice President Melgar clarified that they are in the motion and followed the letter of the law and at the same time tried to be reasonable about what can be done. There was no evidence that there was an eminent hazard because the walls were not inspected, but there very well could be because they were done without permits. Inspector Bosque said the burden was on the property owner to file plans and hire a contractor for inspection.

Commissioner Lee felt that if the property owner went through the process and filed for a permit to legalize the work down there, the whole issue of the electrical in the walls will be resolved at that time. Inspector Bosque said there may not have been a discussion, as Vice President Melgar had previously indicated, if these were vacant units then she had all the time in the world but the problem was the units were occupied, and that was her concern.

Commissioner Walker said that was her concern also. She believed the motion should be identifiable Life-Safety issues and needed to have a permit issued within 30 days and completed within 60 days. They possibly had an inspector inspected prior to determine that but she had not believed they avoided that and a lack of egress could be an imminent hazard. President Clinch said the facts were not that the work was supposed to be done in 90 days, but they can evaluate at that time and to review it in 3 months. They wanted to see a good faith effort and to see something was done.

Attorney Clark clarified that the 30-90 days was for serious and imminent hazards and the whole section applied to Life-Safety Hazards. President Clinch said they made the motion an identifiable Life-Safety issue, a permit filed within 30 days and the work completed within 90 days, and reconvened this issue in 90 days and gave the Appellant 4.5 months to submit a permit to DBI for the illegal units. He asked if any Commissioners wanted to take the exception to the 4.5 months.

Commissioner Mar clarified it was a common practice of the Commission that when things were delayed at Planning, the owner requested an extension and if they reviewed it and communicated with you, then it worked through the process. If they were delayed, it was not the owners' fault.

Commissioner Lee said the 4.5 months was only for plan submittal. Vice President Melgar said they also should include the issue of the fees attached to her good faith efforts and the reduction of the fees. Commissioner Walker said also, there could be an end time that they could modify but wanted to have this done within a year and, if there was a delay in Planning, then they could.

President Clinch said it would take one year to be resolved, but evaluated as they had gone through the process and gave the Appellant one final say. Ms. Roberts said she has gone through extreme financial difficulties and if she complied – if they allowed her more time before she spent a lot of expenses on plans or anything like that. .

Commissioner McCarthy said they preferred 6 months and the compromise was for 4.5 months. Ms. Roberts said she wanted more than 30 days for the initial outlay. Commissioner Walker said if there were Life-Safety issues, they were legally bound. If not, she would have 4.5 months. Ms. Roberts said she believed there were not.

Commissioner McCarthy said if she filed the permits, made an appointment with an inspector and hired a contractor, Inspector Bosque will back up that there was no imminent danger so that will change this whole outlook. Ms. Roberts asked how much this permit will cost?

Commissioner McCarthy said Deputy Director Sweeney can help her with that and this was not a great cost to her and actually a very good compromise. They helped her with the cost through the Department in reducing \$2,000 outstanding and they tied that in and 25 percent and they compromised on 50 percent that helped save money on cost. Commissioner Walker said she was reluctant to do that only because it had been four years since 2008. The Commissioners all agreed to 50 percent.

Attorney Clark wanted to clarify what the motion was. They had gone back and she was not entirely clear. The options had upheld the Order as it was modified or overturned and they wanted to modify the Order of Abatement.

Commissioner Walker made the motion, seconded by President Clinch, to modify the Order of Abatement to allow for imminent Health-Safety issues to be permitted by 30 days, executed by 90 days and the legalization of the units and other code violations of 4.5 months to file a permit within a year to complete it. They were willing to revisit the schedule if there were delays in Planning and if all of the deadlines were met by the Appellant, then they will reduce the fees by 50%. If not, the fees will return to their original and continue to accrue. The Order of Abatement will be held in abeyance for a year.

The motion carried unanimously

A duly noticed hearing before the Abatement Appeals Board (AAB) concerning the property located at **130 Beulah Street aka 130-132 Beulah Street** was held on June 20, 2012. The AAB heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons.

After deliberation of the evidence submitted and the relief sought, the AAB made the following decisions: to modify the Order of Abatement ("OOA") (1) to allow Appellant 30 days to apply for permits to correct all code violations identified in the May 27, 2008 Notice of Violation ("NOV") that constitute a serious and imminent Life-Safety hazard and 90 days to complete all work regarding the same; (2) to allow Appellant 4.5 months to apply for permits to correct the remaining code violations identified in the NOV and one year to complete all work regarding the same; and (3) to reduce the assessment of costs by 50% if the deadlines set forth in (1) and (2) above are met. Appellant shall consult with the Department of Building Inspection for purposes of determining what code

violations identified in the NOV constitute a serious and imminent Life-Safety hazard. Finally, the Order of Abatement shall be held in abeyance for one year and recorded only in the event that the violations are not corrected in accordance with the Order of Abatement (OOA) within one year of the date of this Notice of Decision.

All time periods specified in this decision become effective on the date of the Notice of Decision (June 27, 2012). The Abatement Appeals Board may rehear an Appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision. Obtain a rehearing request form at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103.

E. GENERAL PUBLIC COMMENTS

Secretary Harris called for General Public Comment on items that were not on the Abatement Appeal Board Agenda. There was no public comment.

ADJOURNMENT

President Clinch made a motion, seconded by Commissioner Walker that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 10:15 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, September 19, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on June 20, 2012.

D. CONTINUED APPEALS: Order(s) of Abatement.

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

Attorney for the Owner: Heather Wolnick, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd Floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

On **November 16, 2011**, the AAB voted to continue the case for 90 days to allow parties additional time to resolve the matter.

On **February 15, 2012**, the AAB voted to continue the case for three months to allow additional time for resolution of appellant's forthcoming scheduled binding arbitration proceeding.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142
Myrna Melgar, Vice President	Sonya Harris, BIC Secretary (415) 558-6164
Frank Lee, Commissioner	Teresita Sulit, Recording Secretary (415) 558-6267
Warren Mar, Commissioner	
Angus McCarthy, Commissioner	
Dr. James McCray, Jr., Commissioner	CITY ATTORNEY'S OFFICE REPRESENTATIVE
Debra Walker, Commissioner	Jana Clark, Deputy City Attorney (415) 554-4634

Abatement Appeals Board – AGENDA – Meeting of September 19, 2012 – Page 2

On May 16, 2012, the AAB voted to continue the case for 60 days.

On July 18, 2012, the AAB voted to continue the case for 60 days.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6760: 1654 Haight Street

Owner of Record and Appellant: Romine, Ronald B., P. O. Box 22933, San Francisco, CA 94129

Agent for the Appellant: Leo McFadden, 1459 – 32nd Avenue, San Francisco, CA 94122

ACTION REQUESTED BY APPELLANT: Appellant has requested additional time to complete the work.

On July 18, 2012, the AAB voted to continue the case for 60 days.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6762: 3333 – 26th Street

Owner of Record and Appellant: Lucero LLC, c/o Elba, Henry & Mary Elba, 21 Lakewood Circle, San Mateo, CA 94402

ACTION REQUESTED BY APPELLANT: The appellant has requested more time to complete work to abate the outstanding code violations.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

F. RE-HEARING REQUEST:

1. CASE NO. 6757: 130 Beulah Street aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Rogers, 132 Beulah Street, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6757 previously addressed by the Abatement Appeals Board on June 20, 2012.

Note: On June 20, 2012, the AAB modified the Order of Abatement ("OOA") (1) to allow appellant 30 days to apply for permits to correct all code violations identified in the May 27, 2008 Notice of Violation ("NOV") that constitute a serious and imminent life health and safety hazard and 90 days to complete all work regarding the same; (2) to allow appellant four and one half months to apply for permits to correct the remaining code violations identified in the NOV and one year to complete all work regarding the same; and (3) to reduce the assessment of costs by 50 % if the deadlines set forth in (1) and (2) above are met. The AAB further directed Appellant to consult with the Department of Building Inspection for purposes of determining what code violations identified in the NOV constitute a serious and imminent life safety hazard. Finally, the AAB ordered that the OOA be held in abeyance for one year and recorded only in the event that the violations were not corrected in accordance with the OOA within that year.

Testimony, deliberation and possible action to grant or deny the Rehearing Request.

G. GENERAL PUBLIC COMMENT

H. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, September 19, 2012 at 9:10 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED November 21, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, September 19, 2012 was called to order at 9:10 a.m. and roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch President
Myrna Melgar Vice-President (Excused)
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner
Dr. James McCray, Jr., Commissioner
Debra Walker, Commissioner

Sonya Harris, Building Inspection Commission Secretary

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D.B.I. REPRESENTATIVES PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
Andrew Karcs, Senior Housing Inspector
John Hinchion, Acting Senior Building Inspector, Code Enforcement Division
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on June 20, 2012.

President Clinch made a motion, seconded by Commissioner Walker, to approve the June 20, 2012 minutes.

Secretary Harris called for public comment, and there was none.

The motion carried unanimously.

D. CONTINUED APPEALS: Order(s) of Abatement

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal and public comment.

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

Attorney for the Owner: Heather Wolnick, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd Floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

On **November 16, 2011**, the AAB voted to continue the case for 90 days to allow parties additional time to resolve the matter.

On **February 15, 2012**, the AAB voted to continue the case for three months to allow additional time for resolution of Appellant's forthcoming scheduled binding arbitration proceeding.

On **May 16, 2012**, the AAB continued the matter for sixty days.

On **July 18, 2012**, the AAB voted to continue the case for 60 days.

Christine Tour-Sarkissian, for Appellant, Alla Dubrovsky, owner of the property, requested a continuance for 6 months. Since the last meeting, they did a survey on the assessment of topography with changes at the neighbor's (Mr. Wong's) property. The survey was done and the new plans were prepared to reflect the neighboring property's new topography.

Javier Chavareia, their engineer, prepared and processed the plans according to the survey he conducted. The plans were expected to be complete within the next week or two and they would process through the Building Department and their judge, the arbitrator in the case, and ready to fine tune the last details. Prior to that, she and the opposing counsel had scheduled a meeting for next week with no specific date and the project was moving forward.

Ms Sarkissian asked for a further continuance of additional months to allow them to have the plans completed and the details worked out with either the attorneys or their arbitrator and hopefully avoid returning to the Board. She wanted their engineer, Mr. Chavareia to report to the Board also, and the Counsel for Mr. Wong to report to the Commission to confirm the status.

Commissioner Walker asked if the plans were approved, what was the estimate of time for execution and the completion of the project? Ms. Sarkissian said there was a significant amount of money involved and the insurance as part of it and she anticipated about three weeks for completion. She referred to her engineer, Mr. Chavareia, to address the execution from an engineering point of view. Commissioner Walker said the question was the time to get the permit, assuming there were movements to go forward, and then execution.

Javier Chavareia from JC Engineering said Ms. Sarkissian expressed they had completed a topography survey to establish the current condition of the site and a few small changes that had occurred. When they went to the property to implement, they required modifications to the plans and noticed the topographic conditions had changed and recommended a survey done so their plans reflected exactly what needed to be done.

They completed the survey and prepared the revised graded plan, and their drawings will be done by early next week. The permit process should be fairly simple, as all the drawings had been previously approved under the previous schemes and the modifications that were not substantial from the structural or civil engineering standpoint.

Up to date, they did not foresee any problems obtaining the permit. When it came to execution of the program, the rainy season was approaching, the construction of the retaining wall involved a substantial amount of excavation and modification and the two property owners should discuss this because it would create a great impact in winter. It was important to have the geotechnical engineer's advisement for removal of the retaining wall during the winter season.

The whole process, if done efficiently, can be completed in a matter of six to eight weeks. It may not be feasible to implement it immediately depending on the conditions of the weather and the season. Inspector Hinchion for the Department said the survey clearly was a new development and left it entirely to the Board as the Appellant had a number of continuances.

Commissioner McCarthy asked if the structural soundness was safe and inhibited hazardous conditions or changes. Inspector Hinchion said a survey was done so they had more information as they hired a geotech. It would not take long to review their submittals before a permit would be issued. The Department would not delay this matter but the process with the arbitrator will take time. Commissioner Walker said this case had continued numerous times and wanted a permanent time frame, and also to hear from the public first before they discussed this.

Andreas Becker, representative for James T. Wong, owner of the downhill residence at 1737 - 12th Avenue, confirmed what Ms. Sarkissian said and joined her request for a continuance. He agreed a permanent timeline needed to be established, but the two parties were in agreement that they made progress and he supported her request.

There was no further public comment.

Commissioner Walker made a motion to uphold the Order of Abatement, hold the Order in abeyance to move forward, with 90 days for the permit and six months for completion and allow the consideration of the expected rain. She said it was unusual to extend this over and over again and it would be helpful if there was a reasonable deadline for the permit.

President Clinch agreed that six months seemed reasonable for the permit and the Assessment of Costs can be effective immediately. There was a motion to uphold the Order of Abatement to allow completion of the work within six months. Commissioner Lee felt that six months was too long: It would take six to eight weeks to correct the problem and possibly three months, at most.

Ms. Sarkissian worried about the rainy season and if the plans were completed, they could meet and confer with the arbitrator. They need plan approval before the rainy season and she was unsure if this was possible. The question was whether they can realistically finish the project within the allowed three months given this timetable.

Commissioner Lee felt that three months was essentially 12-13 weeks and if the construction was estimated 6 to 8 weeks, the Board doubled the time and he believes the rainy season would not double the time allowed and should be completed in three months.

Ms. Sarkissian said she did not know if the construction was six weeks but they needed to demolish the existing structure, and she hoped this matter was taken into consideration and perhaps Mr. Chavareia could address that. She believed the demolition would take some time because they needed to coincide with the calendar schedule of the adjoining owners, the Wong's. They are dealing with JAMs and unfortunately they had no control over their calendar schedules.

Commissioner McCarthy suggested they request the arbitrator for an advance decision to expedite this matter and asked if they discussed the time frame with both parties in an agreement, not just the construction time but the whole package.

Commissioner Walker said their agreement was important, but it was not relevant to the decision they had before them, which was the permit. They needed the work completed and it was a safety issue on the retaining walls that had been the issue in the past.

Mr. Beck said Mr. Chavareia knew more than he did with regard to the time frame for the construction. This case was continued several times and taking into account the risk and the Board's interest to expedite completion, he agreed that six months was very fair in terms of the rainy season which can affect that time frame and whatever construction delays if any.

Ms. Sarkissian discussed with Mr. Wong's counsel about the survey that was done, and plans to meet and confer next week on the details as to the timing. She was informed by counsel that he had checked with JAMs about the judge's availability with several dates in October.

Commissioner McCarthy was concerned that since the last time they were here about the survey and from the construction industry who knew the time it took to get service, there had been a lot

of down time. He considered the fact that they needed the time frame and the rainy season and all that, and needed to understand their position. It was very clear that the last time Ms. Sarkissian had time to accomplish the work but returned to the Board with only a survey report, which should have been done in a week-and-a-half.

Ms. Sarkissian understood that but unfortunately it took some time before they could schedule the survey with the Wong's. In order for the attorneys to meet and confer, they needed the results of the survey to be done.

When the judge made his award, he had not anticipated that a survey was needed. In essence, it was not that they had not met and conferred but they waited for that survey to be done in order to meet and confer because the plans required changes according to the survey by Mr. Chavareia.

Inspector Hinchion said the neighboring property had an abatement issue related to the retaining wall and did not appeal it in good faith to facilitate a solution. If the abatement were issued and the Order held for three or six months with immediate assessment of costs, more property owners would be more attentive and it may even help the solution. The property owner had it easy and had affected the neighboring property owner who was not at fault through another Order of Abatement and he would support the Board's decision.

Commissioner Walker wanted to defer the time frame.

Commissioner Lee made a motion, seconded by President Clinch, to defer the time frame for three months to obtain the permit and three months to complete the work.

Commissioner Lee clarified the motion to uphold the Department's recommendation for abatement and gave the Appellant three months to obtain the permit and an additional three months to complete the work when the permit had been received.

There was no public comment on this item and the assessment of costs was included, and Secretary Harris called a roll call vote.

President Clinch	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes
Commissioner Walker	Yes

The motion carried unanimously.

2. CASE NO. 6760: 1654 Haight Street

Owner of Record and Appellant: Ronald B. Romine, P. O. Box 22933, San Francisco, CA 94129

Agent for the Appellant: Leo McFadden, 1459 – 32nd Avenue, San Francisco, CA 94122

ACTION REQUESTED BY APPELLANT: Appellant had requested additional time to complete the work.

On **July 18, 2012**, the AAB voted to continue the case for 60 days.

Inspector Hinchion said 1654 Haight Street, Complaint #201152853, the violation related to an issued permit for compliance with the Notice of Violation on accessibility issues, that permit expired and there was no final inspection. They recently renewed the permit and the work was not completed. He recommended that the Board uphold the Order of Abatement and impose an assessment of costs.

Inspector Hinchion received a call from the Appellant's representative that there was an illness in the family and he was unable to attend the Board hearing. The representative stated they would comply with the Board's decision. The estimated time for them to complete the work for the permit was unclear. When they originally filed the appeal, they assumed the work would be completed in a matter of weeks but because of an illness in the family, it had affected their timeline but expected it soon.

Commissioner McCarthy asked if the accessibility issues were on the ground floor in the commercial space. Inspector Hinchion said the violation was related to the issued permit. The language on the permit was to comply with the Notice of Violations on handicap bathrooms, new ramp in the door entry and wheelchair lift, relocated water heater, removed restroom at basement and non-permitted deck at rear. A lot of the work had been done, but not completed and they were not ready for a final inspection and the permit was renewed January 23rd of this year. They had not request a continuance and had no issue with the decision from the Board. They will follow through with that to the best of their ability.

President Clinch said it seemed like the straightforward option was to uphold the abatement and perhaps allow them an extension of time. Commissioner Walker suggested the Board should uphold the order but hold it in abeyance until 30 or 60 days whichever is reasonable.

President Clinch made a motion, seconded by Commissioner Walker, to uphold the Order of Abatement and hold it in abeyance for 30 days and to include the assessment of costs of \$1,208.

There was no public comment and Secretary Harris called for a roll call vote.

President Clinch	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes
Commissioner Walker	Yes

The motion carried unanimously.

E. NEW APPEALS: Order(s) of Abatement

1. CASE NO. 6762: 3333 -26th Street

Owner of Record and Appellant: Lucero LLC, c/o Henry and Mary Elba, 21 Lakewood Circle, San Mateo, CA 94402.

ACTION REQUESTED BY APPELLANT: Appellant had requested additional time to complete the work to abate the outstanding code violations.

Andrew Karcs, Senior Building Inspector, Housing Division, said this case dealt with replacement of rear stairways for a three-unit building that was presently unoccupied. Actually, the staff granted the property owner more time to complete the work as of September 7th. They were able to submit plans which were approved and they were able to obtain the building permit to start construction, which they started a week ago. The staff felt that by the end of this month the property owner would satisfy the Notice of Violation and complete the work within 30 days. The contractor had already started the work as of last week.

Commissioner Walker made a motion, seconded by Commissioner Mar, to uphold the Order of Abatement and hold it for 30 days and the assessment of costs.

There was no public comment on this item and Secretary Harris called for a roll call vote.

President Clinch	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes
Commissioner Walker	Yes

The motion carried unanimously.

F. RE-HEARING REQUEST:

1. CASE NO. 6757: 130 Beulah Street, aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Rogers, 132 Beulah Street, San Francisco, CA 94117.

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6757 previously addressed by the Abatement Appeals Board on June 20, 2012.

Note: On June 20, 2012, the AAB modified the Order of Abatement (“OOA”) (1) to allow Appellant 30 days to apply for permits to correct all code violations identified in the May 27, 2008 Notice of Violation (“NOV”) that constitute a serious and imminent life, health and safety hazard and 90 days to complete all work regarding the same; (2) to allow Appellant four and one-half months to apply for permits to correct the remaining code violations identified in the NOV and one year to complete all work regarding the same; and (3) to reduce the assessment of costs by 30% if the deadlines set forth in (1) and (2) above are met. The AAB further directed Appellant to consult with the Department of Building Inspection for purposes of determining what code violations identified in the NOV constitute a serious and imminent life safety hazard. Finally, the AAB ordered that the OOA be held in abeyance for one year and recorded only in the event that the violations were not corrected in accordance with the OOA within that year.

Inspector Karcs reminded the Board that this case was previously heard and the Board granted the Order of Abatement and gave the property owner a timeframe to complete the work. The property owner now requested to rehear the abatement appeal again but in the meantime had requested a delay of the hearing due to the holiday and it was in writing and approved by Mr. Sweeney. To date she has not applied for any permits.

Commissioner Walker asked if the rehearing request stated their action and a deadline for requesting a rehearing. Attorney Clark said that the Appellant complied with the time frame for requesting a rehearing and her understanding was that on Sept. 7th she requested a continuance based on the fact that it was High Holy Day.

Commissioner Walker was concerned about allowing a continuance request but her concern was how it affected them in implementing their decision. Do they have to grant a continuance? Attorney Clark said that the Building Department had agreed to it given the reasons. The Board can do what they want but it might be problematic.

Commissioner Lee asked if there was a reason why she asked for a rehearing or discussed that when they continued the matter? Attorney Clark said her grounds for rehearing were stated in the Board’s packet.

Commissioner Lee said he did not see any ground for opening to rehear the item and tended to say no to a continuance as well but he would defer to the rest of Commissioners and as a courtesy to continue the matter.

Commissioner Walker said they made a decision with the timeframe, should they shift back to the original time frame when they have a rehearing? She thought it was 6 months of the date of hearing. Attorney Clark said she was unsure. Before the Board was not the rehearing it was the request for a rehearing. They are a couple steps away unfortunately because the Board had to decide to grant the rehearing and it would not be instantaneously set for rehearing.

Commissioner Lee agreed to grant one continuance. Commissioner Walker wanted to do 30 days and would like to do so with the understanding that the clock started with the original hearing. Attorney Clark said she would look into that.

President Lee made a motion, seconded by President Clinch, to continue for 30 days.

There was no public comment on this item and all were in favor of granting a continuance for 30 days.

The motion carried unanimously.

G. GENERAL PUBLIC COMMENT

There was no General Public Comment.

ADJOURNMENT

President Clinch made a motion, seconded by Commissioner Mar that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 9:50 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, October 24, 2012 at 2:00 p.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 400

Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on July 18, 2012.

D. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6763: 2750 Market Street, #101

Appellant (Homeowner's Association President): Brett Masterson, 2750 Market St., #203, San Francisco, CA 94114

Owner of Record (Lot #045): Forrest, Katherine V., 36707 Avenida Del Sol, Cathedrak City, CA 92234

Owner of Record (Lot #045): Hercus, Josephine L., 2750 Market Street, #101, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: To modify the Order of Abatement to extend the time allowed to complete the work and to reduce the Assessments of Costs.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President	Edward Sweeney, Deputy Director and Secretary to the Board	(415) 558-6142
Myrna Melgar, Vice President	Sonya Harris, BIC Secretary	(415) 558-6164
Frank Lee, Commissioner	Teresita Sulit, Recording Secretary	(415) 558-6267
Warren Mar, Commissioner		
Angus McCarthy, Commissioner		
Dr. James McCray, Jr., Commissioner	CITY ATTORNEY'S OFFICE REPRESENTATIVE	
Debra Walker, Commissioner	Jana Clark, Deputy City Attorney	(415) 554-4634

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6764: 808 South Van Ness Avenue

Owner of Record and Appellant: Deutsche Bank National Tr. Co., 1800 Tapo Canyon Rd. CA6-914, Simi Valley, CA 93063

Owner of Record and Appellant: Tracy Anthony, RAS Partners, P.O. Box 745, Lafayette, CA 94549

ACTION REQUESTED BY APPELLANT: To modify or reverse the Order of Abatement.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. RE-HEARING REQUEST:

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

Attorney for the Appellant: Christine Tour-Sarkissian, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6752 previously addressed by the Abatement Appeals Board on September 19, 2012.

Note: On September 19, 2012, the AAB voted to uphold the Order of Abatement and to impose the Assessment of Costs. Appellant was given three months to obtain the necessary permit and three months to complete the work including final inspection approval.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

F. RE-HEARING REQUEST:

1. CASE NO. 6758: 130 Beulah Street aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Roberts, 132 Beulah Street, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6757 previously addressed by the Abatement Appeals Board on June 20, 2012.

On **September 19, 2012**, the AAB voted to continue the case for 30 days.

On **June 20, 2012**, the AAB modified the Order of Abatement ("OOA") (1) to allow appellant 30 days to apply for permits to correct all code violations identified in the May 27, 2008 Notice of Violation ("NOV") that constitute a serious and imminent life health and safety hazard and 90 days to complete all work regarding the same; (2) to allow appellant four and one half months to apply for permits to correct the remaining code violations identified in the NOV and one year to complete all work regarding the same; and (3) to reduce the assessment of costs by 50 % if the deadlines set forth in (1) and (2) above are met. The AAB further directed Appellant to consult with the Department of Building Inspection for purposes of determining what code violations identified in the NOV constitute a serious and imminent life safety hazard. Finally, the AAB ordered that the OOA be held in abeyance for one year and recorded only in the event that the violations were not corrected in accordance with the OOA within that year.

Testimony, deliberation and possible action to grant or deny the Rehearing Request.

G. GENERAL PUBLIC COMMENT

H. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, October 24, 2012 at 2:00 p.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED February 20, 2013

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MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, October 24, 2012 was called to order at 2:00 p.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch President

Myrna Melgar Vice-President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner (Excused)

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Rosemary Bosque, Chief Housing Inspector

Andrew Karcs, Senior Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on July 18, 2012.

President Clinch made a motion, seconded by Commissioner Mar, to approve the July 18, 2012 minutes.

Commission Secretary Harris called for public comment and there was none.

The motion carried unanimously.

D. NEW APPEALS: Order(s) of Abatement

For each new appeal, the Department and the Appellant were allowed 7 minutes to present their case and 3 minutes each for rebuttal, For each new appeal, the Board invited public comment.

1. CASE NO. 6763: 2750 Market Street

Appellant (Homeowner's Association President): Brett Masterson, 2750 Market Street, #203, San Francisco, CA 94114

Owner of Record (Lot #045): Katherine V. Forrest, 36707 Avenida Del Sol, Cathedral City, CA 92234 and Josephine L. Hercus, 2750 Market Street, #101, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: To modify the Order of Abatement to extend the time allowed to complete the work and to reduce the Assessment of Costs.

John Hinchion, Acting Senior Building Inspector stated the following: There was a letter requesting a withdrawal of the appeal. The Appellant has two permits issued that would clear the violations, so in good faith they paid the initial fees yesterday. The appellant hopes the Board would approve the withdrawal of the appeal. DBI anticipates all the problems will be resolved in the next few months.

Commission Secretary Harris stated the appeal was withdrawn.

2. CASE NO. 6764: 808 South Van Ness Avenue

Owner of Record and Appellant: Deutsche Bank National Trust Company, 1800 Tapo Canyon Road, CA 6-914, Simi Valley, CA 93063

Owner of Record and Appellant: Tracy Anthony, RAS Partners, P. O. Box 745, Lafayette, CA 94549

ACTION REQUESTED BY APPELLANT: To modify or reverse the Order of Abatement.

Inspector Hinchion said the Appellant wanted to speak first. Tracy Anthony, Appellant, said the plans were with the Department and she wanted to withdraw their appeal. They took possession of the building after the Notice of Violation was filed and subsequently obtained their permits and are in the process of having the dry wall inspection completed in a couple of months.

Inspector Hinchion stated the following: He concurred with the Appellant and said the Notice of Hearing was mailed to the owner of record from the Assessor-Recorder's Office. A few days later, they had an issued permit which will give them a 12-month exemption from the Vacant Building Ordinance. The property ownership changed on May 15, 2012 and it would not be fair to penalize the new owner who did not receive the initial notice. As mentioned, they have an issued permit and if the work is not done in a few months the case would be returned to the Department, subject to a Director's Hearing and before the Board but he anticipates it would be resolved.

Commission Secretary Harris said this appeal was also withdrawn.

E. RE-HEARING REQUEST:

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

Attorney for the Appellant: Christine Tour-Sarkissian, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd Floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6752 previously addressed by the Abatement Appeals Board on September 19, 2012.

Note: On September 19, 2012, the AAB voted to uphold the Order of Abatement and to impose the Assessment of Costs. Appellant was given three months to obtain the necessary permit and three months to complete the work including final inspection approval.

Inspector Hinchion said he did not expect to return to the Board relating to this address. The Board was very generous to allow them six opportunities to continue and he was shocked they requested a rehearing but did not see a justification for it. In fact, there were four permits back in 2011, one was suspended, two were filed and no action regarding the two filed permits. The last active permit expired on August 12th and there is currently no active permit on this property. In the meanwhile the neighbor who shared the retaining wall, in good faith, went to a hearing and accepted an Order of Abatement and consequently the other neighbor had not cooperated. He anticipated the Board will not concur with their request for a rehearing.

Attorney Clark requested clarification regarding the request for a continuance.

Inspector Hinchion said the Agenda showed a rehearing request and a decision was made at the last hearing. Commission Secretary Harris said Ms. Sarkissian's law firm sent a letter yesterday requesting a continuance as she had another matter to attend.

Commissioner Lee said before they discuss the request for a rehearing and a continuance, what was the status of the Abatement Order or had the abatement process ceased or continued? Inspector Hinchion said once they received the rehearing request, they held off on recalling the Abatement Order because the rehearing request came in within the required number of days so they were stopped again and the Board gave them an additional 6 months. The only active permit had expired and they were regressing rather than progressing. Attorney Clark said what was before the Commission initially was a request for a continuance.

Alla Dubrovsky, owner of the property at 1743 - 12th Avenue, said she came here without her attorney as she had conflicts between clients and could not represent her at this hearing. She requested to postpone the rehearing until her attorney could represent her.

Ms. Dubrovsky said in April 2005, she and her neighbors, who were represented by an attorney, went to the Building Department to discuss and renegotiate how to resolve the problem of the property line. She had plans dated 2005 to 2008, a suspended 2010 filed permit, an application dated November 2011 and a new request for another permit to be reviewed. The Planning and Building Departments cannot review her permit because her neighbor requested a discretionary review on one of her permits and it had been 7 ½ years.

The Appellant said she understood the intent of the Abatement process was to force the owners of properties into compliance. In 2005, she paid the engineer for 7 years of work on the plans and one permit application was designed after another. She could not do anything because her neighbor's attorney was very creative and worked the system very well. Her lawyer was given a short notice and had scheduled another hearing which was impossible to cancel and she had a conflict of more than one client.

Commissioner Lee said the request for rehearing was received on October 5th and rescheduled on October 3rd. Ms. Dubrovsky said she submitted her request for a rehearing but did not know the rescheduled date. She attended a hearing in April or in May and it was postponed. Since 2008, her attorney filed a lawsuit against the neighbors to discuss and to resolve the problem. A settlement was made in August 2010 where they agreed to a set of plans but subsequently suspended it. There were two more mediations after settlement and two arbitrations in January 2012 and one scheduled on October 29, 2012. She did everything to comply but her life was suspended and she cannot work. Although her plans were at DBI they cannot be reviewed. She would be happy to submit to the City her engineer's plans, have it billed and the cost assessed to the property.

President Clinch said unfortunately a discretionary review had been filed, given the history of animosity between the two parties. They were informed at the last meeting that there was some progress and unfortunately, the neighbors opted not to speak. They debated about a month ago and the Board agreed that 6 months was sufficient. He wondered why the decision the AAB made was somehow detrimental to her as opposed to the other property owner. Ms. Dubrovsky

said the intent of the Abatement process applied a penalty to homeowners who refused to comply. She tried to comply for 7 1/2 years with plans, reviews and frequent communications with the Building Department who were all familiar with her but she was not able to do anything, so she asked why the penalty.

President Clinch asked what penalty the Appellant was referring to, and said he wanted to understand but could not follow her. Ms. Dubrovsky said this was why she needed her attorney to represent her.

Commissioner Lee questioned whether the Board should debate the request for a continuance. The Appellant appeared and requested the rehearing, and it was not their problem that her attorney could not be present to represent her. Vice President Melgar said they needed to rule on the continuance issue before they considered rehearing this matter.

Attorney Clark said the difficulty would be if the Commission denied the request for continuance then there is no continuance, the request for rehearing will be heard today. The Appellant needed to present the grounds for rehearing without counsel and that might be a problem.

Commissioner Mar asked how could she have requested this on such short notice for the Commission because he thought it was clear at their last meeting that they gave her an extension until December, which was last month. Attorney Clark said she would have to present her case for why she should get a rehearing and it was still the same problem that the Commission was putting her in a position of having to present a case without her chosen counsel.

Commissioner Mar said he was confused and needed clarification. She requested this hearing a long time ago and not 24 hours ago. Attorney Clark said she requested a rehearing in early October and requested the continuance of this matter of the rehearing request yesterday.

Commissioner McCarthy said if he understood the testimony, her lawyer notified her 72 hours ago that she could not attend the hearing because of conflicting issues, although she was aware of the hearing schedule since October 5th. Attorney Clark said they were unsure when she received the notice of the hearing today but it may have been 10 days ago on October 9th.

Ms. Dubrovsky said she understood that her attorney attempted to communicate with the Department that she had a timing conflict between the clients and cannot attend the hearing. Last week she was in the Building Department, two days ago and yesterday. She communicated to the Board that she cannot represent her today and she started since last week.

President Clinch made a motion, seconded by Commissioner McCarthy, not to continue this appeal and said six months was quite enough time. If they find the discretionary review further delays this matter after 6 months they can re-evaluate it at that time, but he agreed with the Department this had taken up a lot of their time already and they wanted to move on.

Commission Secretary Harris asked if there was public comment on the motion.

Ms. Katherine Roberts said the brief notice for rescheduling a month earlier than the original

scheduled date at the end of November had been unbelievably problematic for her. She thought the decision was whether or not to give her a continuance. She asked if the Appellant's hearing just moved up from December 21st to today like hers? Commission Secretary Harris said no, it did not. Ms. Roberts said she retracted her statement.

There was no additional public comment.

President Clinch made a motion, seconded by Commissioner McCarthy, not to continue this rehearing.

Commission Secretary Harris called a roll call vote:

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray, Jr.</i>	<i>No</i>

The motion passed 5-1.

Inspector Hinchion wanted a clarification of the vote to reject a continuance and if a decision was made on the rehearing. Attorney Clark said the grounds for rehearing under the administrative code were new evidence or legal error and the Board needed to ask the Appellant if she had new evidence or legal error.

Inspector Hinchion apologized for the confusion. The Department suggested not granting the rehearing request because no progress had been made since their decision at the last hearing and the only active permit for the property had expired. The Department was concerned that the Appeals Board made a decision and both of them will have consequences if they granted a rehearing and meanwhile the retaining wall failed and caused injury to people.

Ms. Dubrovsky said she was not prepared to argue without the presence of her lawyer and read her attorney's reason for the request for rehearing. "The Appellant requested a rehearing because of the history of this case showed her diligent participation and willingness to abate the problem. Additionally, the Appellant disputed that she was penalized for her efforts to abate. The permits, some issued and expired, some filed but not processed, and some new permits which cannot be reviewed because of the discretionary review, it showed that the Appellant tried to fix the problem to abate the Notice of Violation and it was unfair to penalize her for trying to comply and she asked to allow for the rehearing."

Attorney Clark pointed out that the Appellant's counsel prepared a written statement attached to her request for rehearing, titled Exhibit A, and asked the Commission to review it which was essentially her argument for a rehearing. In addition to the attached filled form, there was an attachment titled Exhibit A. The first point that counsel made in Exhibit A was a dispute regarding the ownership of the wall. For justification, she reviewed the July 18th hearing where

the Commissioners sought to clarify a dispute of who was responsible for the wall and Ms. Dubrovsky's counsel said her client agreed to take responsibility for the wall pursuant to a settlement agreement and it was not necessary to decide on the property line because it was part of the settlement agreement. That was consistent with her recollection, but she wanted to confirm that.

Ms. Dubrovsky said the lawsuit had been filed but not heard yet because they attempted to settle the case, at which time both neighbors agreed not to discuss the ownership of the wall until August 2010; and, if the settlement stayed, she accepted the ownership of the wall going into the future. If the settlement did not stay a lawsuit is filed and still open, and if the arbitration cannot help them on Monday, they will go to court and start from ground zero. She did not know of any other alternatives to close this case and claimed she did not own the wall. The predecessor of this property built the house 5 years after her neighbors and it was their wall.

Vice President Melgar said she recalled at the last hearing Ms. Dubrovsky's attorney and her neighbor's attorney came before them and talked about how well the mediation process went. At a couple of hearings, they talked about the certainty of a resolution and the Board granted a 6 months extension based on assurance that both parties were coming to a final resolution.

Vice-President Melgar did not believe that rehearing this case would harm them in any way if they adhered to their original plan until December to work it out. There was no new evidence on her attorney's statement. The points she made were restatements that were heard in the past and she did not see how it would harm her to give the process a few more months. Discretionary review at the Planning Department, while it can be lengthy, was not a black hole. It had a time limit and a process that was established for a reason. If the question before them was rehearing this, she would disagree.

Ms. Dubrovsky said there was a discretionary review and this new fact came in yesterday and she can do absolutely nothing. Vice President Melgar said that was not a new fact and that was the process. Her attorney should have advised her that it was a possibility and the process that was available through the Planning Department. She did not believe it was a black hole and it was a time limited process through which other folks can give their opinion about the project that was being proposed.

Commissioner McCarthy said they were in this predicament because there was a commitment from the attorneys that they had a resolution. The AAB received a lot of criticism from the Department because the Appellant was given more time to resolve something that should have been resolved a long time ago, so he wants closure and is ready to rule on this.

Ms. Dubrovsky asked how was it fair if you were doing it to one party and another one was just living free? The neighbors were living free – They caused trouble, sabotaged the project and were not harmed at all. The City was obligated to keep peace but penalized her for trying to mitigate the process and three months will not make any difference. The lawyers expressed their best hope and it was her hope for 7 years, but now it is hopeless.

Inspector Hinchion said to keep in mind that the neighboring property was issued an Order of Abatement on July 7, 2011 for the same retaining wall. If the Board decided to reject the rehearing request, they were simply returning to the decision they made at the last hearing, which the Order of Abatement on this property went through.

Commission Secretary Harris called for any additional public comment.

Mr. Rubin Becker, represented the downhill neighbor at 1727 - 12th Avenue, and said there were some comments and observations made regarding both attorneys coming before the Board on several occasions that expressed some hopefulness that there was an end in sight. He had a little different view of the process than Ms. Dubrovsky described as the chronology of events.

Mr. Becker said there was a lawsuit filed when the wall failed and the mediation before JAMS, Judicial Arbitration Mediation Services. They agreed in the mediation agreement at the beginning that if the mediation was unsuccessful, the same judge would serve as arbitrator in a binding arbitration. They had spent three days taking evidence and having arbitration proceedings.

Mr. Becker said there were some post-arbitration briefs and an interim arbitration award granted by the arbitrator, Judge Snowden on July 16, 2012, which he made some very clear guidelines and decisions as to what would happen. He left open for the parties to sort out some of the details and left open for Ms. Dubrovsky if it were necessary to go back and get necessary permits or revise or modify proposals that were part of the interim arbitration award.

Mr. Becker believes that Judge Snowden's award will be finalized, whether on October 29th or shortly thereafter, as an order. He did not see, and the law had always surprised him in his 40 years of practice, that this could go back to court successfully. It is binding arbitration and everyone had ceded their right to have a court hear this because it was binding arbitration and he had very little belief that this could ever go back to court and there is finality coming. He did not know whether it was Armageddon or peaceful valley, but it was coming. He wanted it made very clear that when he made his assurances with Ms. Dubrovsky's attorney to this Board, it was sincere and it was with the knowledge that Judge Snowden is God in this case.

Vice President Melgar, seconded by President Clinch, made a motion to deny the rehearing of the appeal.

Commission Secretary Harris called a roll call vote:

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray, Jr.</i>	<i>Yes</i>

The motion carried unanimously.

F. RE-HEARING REQUEST:

1. CASE NO. 6758: 130 Buelah Street, aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Roberts, 132 Beulah Street, San Francisco, CA 94117.

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6757 previously addressed by the Abatement Appeals Board on June 20, 2012.

On **September 19, 2012**, the AAB voted to continue the case for 30 days.

On **June 20, 2012**, the AAB modified the Order of Abatement (“OOA”) (1) to allow Appellant 30 days to apply for permits to correct all code violations identified in the May 27, 2008 Notice of Violation (“NOV”) that constitute a serious and imminent life, health and safety hazard and 90 days to complete all work regarding the same; (2) to allow Appellant four and one-half months to apply for permits to correct the remaining code violations identified in the NOV and one year to complete all work regarding the same; and (3) to reduce the assessment of costs by 30% if the deadlines set forth in (1) and (2) above are met. The AAB further directed Appellant to consult with the Department of Building Inspection for purposes of determining what code violations identified in the NOV constitute a serious and imminent life/safety hazard. Finally, the AAB ordered that the OOA be held in abeyance for one year and recorded only in the event that the violations were not corrected in accordance with the OOA within that year.

Andrew Karcs, Senior Housing Inspector, said this property is a two-unit building on two floors of occupancy over a basement area. The basement area was converted into two additional units creating a 4-unit building on 3 floors of occupancy without permits or inspections. The original Notice of Violation was issued on this property on May 27, 2008. The Appeals Board held an extensive monthly hearing on this case back in June 20, 2012 and based on that testimony that was taken from staff and the property owner, a Notice of Decision was issued on July 27, 2012.

The Board gave the property owner 30 days to apply and obtain building permits to correct all violations that dealt with any serious and imminent life/safety hazards. Also they gave her 90 days to complete the work and an additional 4 1/2 months to obtain any additional building permits to correct the Notice of Violation. It had now been 4 months since the date of that hearing and currently the property owner has yet to apply or obtain any building permits. The staff recommended that the Board deny the Appellant's request for a rehearing since no permits were filed to comply with the Notice of Violation or the Notice of Decision from this Board or any new evidence had been provided to the Board.

Commissioner McCarthy disclosed to the Board, in case there were any conflicts, before Ms. Roberts makes her comments on the last hearing, that he gave his phone number to her if she had

any questions. Ms. Roberts left him a detailed message but he did not return the phone call but can admit his assumptions from that message.

Katherine Roberts, the Appellant, said her hearing was originally scheduled on November 21st and the rescheduled hearing had inconvenienced her and she was in daily contact with the Department since the notice was received. She re-adjusted her hearing schedule to accommodate the Department's error. The Commission allotted her enough time, but she never heard about the process of a Department moving the schedule forward if there was an error, especially a solid month as this has disadvantaged her.

She was extremely upset that she called numerous times on a daily basis and the Department did not return any of her phone calls. She believed there was both new evidence and/or legal error which was not brought up before but these are old records from 2008-2009.

Ms. Roberts used the projector to show a Notice of Violation that a former tenant reported and claimed there were problems with egress, life/safety hazards that was left on a door hanger by Michi Wong of the Fire Department. She was in New York at the time and returned about a week later. She later scheduled an appointment and the Fire Inspector performed a very thorough inspection of the entire building and found no violations. She requested it be removed from the record but she was not there on her initial visit so it could not be retracted. There was no notice or scheduled appointment from her initial surprise visit.

The violation remained on the books and was finally abated. Another document indicated all those violations were corrected. The one-room units have 5 doors divided between the two units or exit doors between them. They have many points of egress on the ground floor windows which were big enough to crawl out to safety if needed. They have more egress than she does up on the third floor and she would be trapped or forced to jump out of a window if anything happened.

She would rather be in one of those units than her unit if there was a fire or an emergency earthquake. She said the Fire Department stated that if they share a common entrance with two people, she told him the square footage, and if there were only two people within a thousand square feet of space, even if they shared a common exit and that was their only exit, he would not be concerned about egress. Each unit has a private exit and entrance including all these other points of egress.

The Fire Department was not concerned about this at all. The second point was about the electrical wiring, supposed electrical hazards. She understood all this looked very bad on paper and a horror story waiting to happen. She showed a record from the Department of Electrical Inspection indicating the same tenant contacted the Fire Department claiming all these life/safety hazards.

The Electrical Inspectors inspected and only found minor problems of a 3 prong socket that should have been a 2 prong socket. They thoroughly inspected the entire building. She took out permits and complied with everything that she was asked, and Inspector David Green had abated the case. All the supposed electrical violations were not all that much to begin with, she totally

abated them. There were no electrical, fire and life/safety hazards that she knew of.

The other things on the list, the units were built with no fire resistant materials, they were sheet rock, not masonry. She was not a contractor, but she talked with electricians and other people that said it was code compliant for fire resistance. It had a 7-foot ceiling in 2008 when the inspection first happened that was substandard because the minimum code was 7 1/2 feet, but the code has since changed and the current code is now 7 feet which is acceptable so the ceiling height is no longer a problem.

President Clinch asked for the Department's rebuttal.

Rosemary Bosque, Chief Housing Inspector, said Ms. Roberts had two dwelling units with no permits and they have not seen the documents presented by the Appellant to the Board but if they had, she believed these documents were irrelevant to the issue before them. From staff's standpoint, the Board spent a considerable amount of time since June and gave the property owner more than generous consideration of the conditions at this site.

Inspector Bosque said if the property owner felt these items would meet the code requirements, she should file the building permits to ensure that the occupants of that space, the occupants of the rest of the building and the adjacent property owners were protected. Unfortunately this is the Department of Building Inspection, under State and local laws building permits were required and the same thing throughout the nation that all jurisdictions were required to do this. There has been no new evidence of error in law and the Department recommends the Board deny the request on those grounds.

Ms. Roberts said from her point of view it was confusing. She was asked to fix ceiling heights that were now legal. How can she obtain a permit to correct a safety hazard that does not exist. The smoke detectors were fine and she was ahead in compliance with the January 2013 requirements. The list was inaccurate and second of all, the items that were not covered were pre-existing non-conforming use. Those units were there for almost as long as the building was there. If you were talking about converting it to its original use, you were talking about a tiny fraction of the time that the building had existed and it was a hundred years ago.

Ms. Roberts said if she puts in a garage, which most people do on their ground floor, it would certainly not be converted it to its original use. What she had was much closer to the original use of the building than anybody else on her street. The windows were all original and the City approved the building without windows but they were put in later without permit, which was absurd, they were all the old original windows on the ground floor.

The Appellant said there were many non-issues that predated her purchase of the building and there was nothing she could do about them.. She can obtain permits and whatever but she frankly did not understand and it was like a solution in search of a problem. She did not understand what she was supposed to do and she has started reaching out to the Mayor's Office and her Supervisor Olague. There were other people who understood these criteria of supposedly illegal units applied very inconsistently and understood this was the City policy.

Ms. Roberts said if there were no life or safety issues and these units were 75 years old, the building went through two major earthquakes and the sky had not fallen yet. She lived upstairs and literally put herself in hock taking care of her building. She cannot see what was wrong with these units and believed that the policy was wrong. She needed more time to work with the policy makers to see if the policy can catch up with her situation with these pre-existing non-conforming issues. From this inaccurate list, she cannot understand what she was supposed to do to correct any of these issues. That was the problem and she contacted the Department for clarification but there was no response to get any clear answers.

There was no further public comment.

Commissioner Mar said while he was not inclined to grant a rehearing, here was the problem: This was another one of those cases where the AAB was very clear the last time this came before them, he thought they were very generous in the amount of time that they gave the homeowner and the landlord. They suggested she obtain the permits for the two illegal units. There had been multiple complaints and when it was placed on their agenda, he received more emails and phone calls about the fact there was illegal work being done. These were some of her tenants and former tenants but they were not living there a hundred years ago. They saw people coming in and doing some of the work that their inspectors said was not permitted.

Commissioner Mar said there would be no problems if the Appellant obtained the building permits, and completed the work for re-inspection to legalize those units. She was responsible to bring the property into code compliance and complete the work. The AAB gave her plenty of time and should not rehear this case as pro bono when nothing was done and she has not attempted to obtain a permit. If there was work in progress and her contractors, architects and engineers needed more time to continue the job it would be different. The Board has always been amenable to that, but to state that she did not have enough time made no sense to him.

Commissioner Lee asked if the Department had reviewed the documents the Appellant produced from the Fire Department and Electrical inspection? Secretary Ed Sweeney said they did not see any of the Fire Department's documents but he believes it would not change the overall nature of the Notice of Violation that there were two illegal units and they needed to be legalized.

Commissioner Lee said he thought the Board's decision the last time they heard this case was to allow the Appellant 30 days to apply for permits to correct code violations that constitute a serious and imminent life hazard and 90 days to complete all work regarding that. He wondered if those documents could erase this statement, and if that was the case the only thing left was no. 2, which the Appellant would have 4 1/2 months to apply for permits for the illegal construction or the non-permitted construction.

Mr. Sweeney said the first part of the question would not change. He did not know what section of the building the work was done for the electrical permit, and he had not spoken to Inspector Wong so he did not know what she was looking at on the Fire permit. If the board goes against the rehearing, she still has 4 1/2 months to either change policy, as she talked about obtaining permits to remove the units or to comply. Commissioner Lee said that would still stand, of course.

Commissioner McCarthy said when he saw this case he hoped the AAB could work out something with Ms. Roberts, but what she asked them to do was to rewrite the rules. They understand her dilemma, but there are a lot of buildings in town that had that situation but they have guidelines to follow. What they can offer was time and hope that they can come up with a solution, but obviously they were still at the same place as they were when they first talked months ago.

Commissioner McCarthy said the board wished her all the best but he cannot keep “kicking this can” down the road. The AAB has to address what was in front of them and it seemed like it was a Planning issue and if the policy had changed that would be great. They probably would welcome something like this so they do not have cases like this in front of them. He did believe her testimony that she purchased this building and inherited a lot of these issues they have, but it did not change where they can go or how he votes on this today.

President Clinch said the matter before them is what they voted was a request to reverse the Order of Abatement. Attorney Clark said if the board grants a rehearing, there would be a new hearing. The purpose of this was for the Appellant to present new evidence or legal error.

Commissioner Lee said if the material that she produced today from the Electrical Inspector and the Fire Department and if those were satisfied by the Department regarding imminent life/safety issues, would the first item be removed and she would not need to apply for a permit?

Secretary Sweeney said they did not know a lot of things and they did not know if the sheet rock that she talked about, was it 5x8 which was one hour. The 7 foot, he believed she had it wrong. Habitable room was now legal at 7 foot 6 and there was a whole host of codes.

Commissioner Mar made a motion, seconded by Vice President Melgar, to deny the rehearing request.

There was no public comment on the motion. Commission Secretary Harris called the roll call vote on the motion.

Commission Secretary Harris called a roll call vote on the rehearing request.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray, Jr.</i>	<i>Yes</i>

The motion carried unanimously.

G. GENERAL PUBLIC COMMENT

There was no public comment.

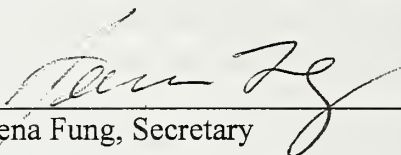
H. ADJOURNMENT

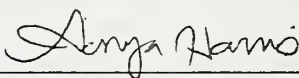
President Clinch made a motion, seconded by Commissioner Mar that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 3:16 p.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, November 21, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on September 19, 2012.

D. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6765: 118 Taylor Street

Owner of Record and Appellant: Laleh Zelinsky Revoc. Tr., 172 Golden Gate Ave., San Francisco, CA 94102

Agent for the Owner: Henry Karnilowicz, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: Seeking relief from the requirement of the San Francisco Housing Code Section 505 Subsection B which requires a minimum of two public bathrooms per floor.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD

Kevin Clinch, President

Myrna Melgar, Vice President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

DEPARTMENT REPRESENTATIVES

Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142

Sonya Harris, BIC Secretary (415) 558-6164

Teresita Sulit, Recording Secretary (415) 558-6267

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney

(415) 554-4634

E. GENERAL PUBLIC COMMENT

F. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112; web site: sfgov.org/ethics.



ABATEMENT APPEALS BOARD

Wednesday, November 21, 2012 at 9:10 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED March 20, 2013

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A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, November 21, 2012 was called to order at 9:10 a.m. and a roll call was taken by Commission Secretary Ann Aherne, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch President

Myrna Melgar Vice-President (Excused)

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

Ann Aherne, Building Inspection Commission Secretary {Retired}

Sonya Harris, Building Inspection Commission Secretary (Excused)

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Rosemary Bosque, Chief Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Aherne administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on September 19, 2012.

Commissioner Lee made a motion, seconded by President Clinch, to approve the September 19, 2012 minutes.

Commission Secretary Aherne called for public comment and there was none.

The motion carried unanimously.

D. NEW APPEALS: Order(s) of Abatement

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal, discussion and public comments.

1. CASE NO. 6765: 118 Taylor Street

Owner of Record and Appellant: Laleh Zelinsky Revocable Trust, 172 Golden Gate Avenue, San Francisco, CA 94102

Agent for the Owner: Henry Karnilowicz, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: Seeking relief from the requirement of the San Francisco Housing Code, Section 505, Subsection B, which requires a minimum of two public bathrooms per floor.

Chief Housing Inspector Rosemary Bosque said this particular property was built in 1906 and is a residential hotel. It has 63 guest rooms, 38 are residential and 25 either falls within the hotel conversion ordinance and is classified as a residential hotel. The issue before the Board today for this building is it had 3 floors of occupancy over a commercial space.

Inspector Bosque showed a photo of the building, and said the issue before the Board was that there was a provision in Chapter 5 of the San Francisco Housing Code, which was retroactive that requires a minimum number of public or common bathing facilities and sanitation facilities per floor. This particular provision had, as it is today in the Housing Code since 1995, been reaffirmed by the Building Inspection Commission and the Board of Supervisors over the years.

A brief history on this was it used to be that these public bathrooms had gender labels for men and women and the Code was changed back in 1994 and 1995 because the City saw that there was a greater demand for men in these rooms and the women in the residential hotels did not have any bathrooms so the Code was changed to require at least two of these facilities: a water closet, a bathing facility and a sink if the lavatory and sink were not in the room. That would be a tub/shower and tub/shower combination and at least two for every floor of occupancy that had 2 to 20 rooms and then from 21 to 30 it goes up to 3 then 4, 5 and went in increments of 10.

In this particular building they had 19 guest rooms on the first floor, 22 guest rooms on the 2nd and 22 on the 3rd. There were some private bathrooms: 1st floor had 8 and 2nd floor had 9 and

essentially there were at least 11 guest rooms with no bathroom on the first floor of occupancy and 13 on the 2nd. Obviously this falls within the 2 to 20 range so you needed at least two.

Inspector Bosque showed a schematic of what the building looked like and focused on the area that was taken off the Hotel Emergency Plan. There was a water closet and one shower room that was typical for all of these. It was irrelevant to this Code section that the building was built in 1906 and it may or may not have these. The Board of Supervisors, the Commission and the Mayor had determined that the minimum standard given the occupancy load of this building was a minimum of two.

The Housing Code had the authority under local and state law to be retroactive and indeed there was a whole list of retroactive provisions and this Code section was one that was listed in Chapter 2 of the Housing Code. The inaugural structural engineer on this Commission, while going through the changes, had each of those descriptions of what sections were listed and it was retroactive. All other buildings built at this time were also required to implement this.

There may be a handful of properties that are not in compliance and in this particular instance, Ben Ng, of the Code Enforcement Outreach Program, actually brought this to their attention. Staff went out to look at it and saw they were in violation and wrote a Notice of Violation (NOV). They had the typical process required by Code and the Notice of Violation went to the property owner on site, and they dealt with the lessee as far as trying to work with them to see what some solutions were.

In this instance because there were private bathrooms in some of these rooms and one of the options that they had was to make one of those rooms to take that particular bathroom or shower to create access into the public hallway and would require a building permit as indicated on the NOV. Some of the rooms were occupied and from her discussions with the field Inspector there was a transient nature to the occupancy of this building and as such some of these rooms that had vacant bathrooms would come up for vacancy then the property owner would have the opportunity to do this. They were willing to give the property owner time to work this out but strongly felt that a minimum of two bathrooms were required as far as health and safety.

There was no equivalent for a bathing facility and from that standpoint there was not an equivalency and what essentially happened was that the person had to get to the 3rd floor above and compete with everybody else trying to share that one shower. The other thing to consider was that of all of the items that the Housing Division and the Building Inspection Department received as far as the complaints in the residential hotels such as: Problems with the bathrooms being improperly maintained or unavailable – This was the other reason why two bathrooms were required and inevitably one would be down for whatever reason, and if the shower is down you would be competing for two showers and there were quite a few of them.

President Clinch asked if there was a timeline that the properties had to comply with the ordinance when it was passed in 1995?

Inspector Bosque said she was not the Chief then but when first scheduled they actually had more than two and realized there were many buildings not in compliance and dropped to what

the City felt was the absolute minimum and they worked with the property owner on that. They did not write any violations initially and gave them opportunity as rooms became vacant to place them in and most have complied. In this instance it came to the Department's attention to give property owners enough time but there were people occupying them and competed for three showers and it needed to be reasonable.

Commissioner Mar wanted to know how long this violation has been in effect? Inspector Bosque said the Notice of Violation was issued in August 2012, and this case did not go to a Director's Hearing since the property owner asked to waive it and go before the Abatement Appeals Board.

Commissioner Lee asked if the NOV was issued in August, when was the first time the Department found out about it? Inspector Bosque said generally as they do inspections they would see that these situations occur. One photo showed some of the doors as they walked by, and unless the doors were open the garbage may have been stuck if the doors were closed with another shower room. In this particular instance, it came to their attention that the property was not in compliance when the Notice of Violation was written in August.

Inspector Bosque said when they walked down the hall and if the doors were closed, and there was not a specific complaint about this issue Inspectors would not necessarily have known. There may be a handful of buildings that are not in compliance, because of a lot of these buildings were done on a room to room inspection and Inspectors found problems and worked with the property owners to force them into compliance. The Code Enforcement Outreach program was absolutely crucial to help in this situation. Generally when buildings fell below the requirement usually there were alterations without a permit and that affected the situation as well, but there was no evidence of that here.

Commissioner McCarthy asked why there was no hearing on this? Inspector Bosque said there is a provision in Chapter 1A of the San Francisco Building Code that allows a property owner when they have a Notice of Violation to be scheduled for a Director's Hearing or if they wish they can ask that it be waived and come directly to the Commission. Staff received a request in writing from the property owner's representative, Mr. Karnilowicz.

Commissioner McCarthy asked was this hotel operated by the owner or a lessee? Inspector Bosque said she believed it was a lessee involved and it may be Bill Ticore who had been a lessee of record in the past. While the Notice of Violation was issued to the property owner on site when they were there and possible options were discussed with the lessee if they were in control of the property, so the Department communicated with both.

Commissioner McCarthy asked who would come to the Hearing? Inspector Bosque said the property owner or the lessee's representative and the owner's agent, Mr. Karnilowicz can explain that.

Henry Karnilowicz, representative for Bill Ticore, the lessee of the hotel. As Inspector Bosque stated the building was built in 1906 and he tried to find the original drawings and could not find them from Records Management. He got the original permit but it did not indicate how many

rooms were in the hotel. Most of the hotel was for traveling salesmen and not made to live in and never had all the facilities that other usual hotels had since people stayed briefly a day or a week and moved on.

Mr. Karnilowicz said it was the existing floor plan when it was built, and it was not unusual that the hotels did not have the two bathrooms. The hotel did have private bathrooms on each floor and asked for an exemption from this ordinance, because when it was built and the floor plan had not changed and not different from many other residential hotels in the area. It would take away the private bathrooms from people that have them right now and tenants would object and may file a claim from the Rent Board, so to prevent them from doing that this is their opposition at this time.

Commissioner Walker asked if they were willing, if next time one of these becomes a private room that have a bathroom and the owner would want to convert that to public access? Mr. Karnilowicz said they would have to do that and he believes it will come out of his pocket and not from the owner's pocket and would like to avoid that. It would be nice to have a room with a full bathroom with better quality of life, and the other rooms without a bathroom were not right. He would need some time depending on what the Commission decided.

Commissioner Mar said it was kind of related and 25 of the rooms are tourist hotel rooms and they did not stay there very often. He asked if some of the tourist rooms have private bathrooms? Mr. Karnilowicz said the way the hotel was set up and when they came up with the HOR Ordinance, he believes the City did a survey of how many days people occupied the rooms and if it was more than 30 days, and how many were not and came with residential and tourist rooms. They are primarily run as residential hotels and not tourist hotels. It was hard to rent out rooms to residential hotels and to tourists because of the clientele that was there and that was not usually how it was done and there were no turnovers in those rooms.

President Clinch said there was no rebuttal from the Department.

Pratibha Tekkey, Organizer Coordinator of the Central City Collaborative, a part of the Tenderloin Housing Clinic and funded by DBI to work with DBI inspectors on habitable issues and the Tenderloin and South of Market, said they had a mini presentation and briefly gave the framework of what they did and her co-workers would present specific issues in the Warfield Hotel, including tenants from there that would address the issue.

There is a Tenants Outreach Program and some of the tenants who became Tenant Organizers do outreach to hotels and talk to tenants about their tenants' right issues, habitability issues, and how to address them. When there are series of issues on one particular building, they try to have a tenant meeting to address those issues. They send a letter to the landlord or lessee to work on these issues and give them 7 to 14 days to fix the problem, depending on the seriousness of the issue. If not, they contact the DBI inspector and tend to work with the tenants because the tenants are usually afraid of DBI inspectors or talk directly with the landlords and she and her staff are arbitrators and address the issues. They have done this with the Warfield Hotel and next the Board will hear from some of her staff and tenants on how it went.

Ben Ng, who worked with Pratibha, said he is with the Tenderloin Housing Clinic and is the Program Coordinator for the Code Enforcement Program. He explained how they were involved with the building and tenants and gave common issues that they faced on a daily basis and some quick facts. Within the last 2 years (2010 to present), there have been a total of about 29 NOVs that were issued to the Warfield. There were about 9 issued this year, about 10 NOVs in 2011 and 9 NOVs in 2010. There were 49 total complaints filed against the Warfield and the majority of the complaints filed were based on habitability and common area issues that were identified as Housing Code Violations.

Some issues consisted of no heat in the building, broken or inoperable windows, missing or no smoke detectors in the rooms, broken door knobs or broken locks. There were holes in the walls, major pest rodent infestation, including but not limited to bed bugs, mice, cockroaches and leaks underneath the bathroom sinks or broken sinks, electrical outlet issues and inoperable elevator that consistently broke down; and as mentioned by Inspector Bosque as the latest violation, inadequate public sanitary facilities for the hotel and there was no uniform visitor policy posted in the common area.

There were two major inspections done by DBI. A room by room inspection conducted by Inspector Der Vartanian in December, 2010 and a recent inspection by Inspector Herring, who worked closely with the City Attorney's Office and was issued in June, 2012 and both of these NOVs were active. He recommended the Board deny this Appeal and move it forward to an Order of Abatement.

Preissa Honey, Community Organizer at the Organizing Division of the Tenderloin Housing Clinic, wanted to give more detailed insight regarding the issue of access inside these types of buildings, especially the Warfield, which was extremely difficult to access. Community and organizers who went inside the building were greeted with hostility upon requesting to go inside and meet with the tenants. The management's usual response was "get out of here."

If the organizers were treated this way, she imagines the tenants who were uneducated about their rights were also disrespectfully treated. The lack of their presence is proof of the fact that their outreach at the Warfield was not successful. The tenants at the Warfield were on fixed incomes and most of them were on SSI or GA. Most of the tenants were afraid to come out to speak against the managers because of the fear of becoming a victim. She showed photos of specific issues in Room 220, a ceiling falling off, a broken window, the flooring is basically cement, the trash within the stairway and a small example of some of the rodent infestation which was very common in the building and in fact it was not an isolated incident and tenants were living there. In conclusion, they had given the operators ample opportunities to collaborate with them by inviting them to resolve the tenant issues by writing letters and requesting with peers but they have not cooperated and they would deny this Appeal and recommended a swift Order of Abatement.

Denise Maloney, Peer Counselor at the Collaborative, which means that when tenants come in and they were afraid to talk to people of authority they can talk to a peer, somebody who lives in the Tenderloin and knows what they have been through and may be more candid with people like

them and there are 10. She has been doing this about 2 1/2 years and talked to numerous tenants from the Warfield.

Many of them no longer come to the Collaborative because they left the building and could not get their needs met. Habitability is increasingly a problem. In June, she saw a tenant, who is here today, Arthur Bray, who came in and wanted to get a lifeline telephone since they provide low-income telephone services for tenants. Most hotels in the area have a phone jack in the rooms but Arthur's room did not have a phone jack. They typically write a letter requesting that a phone jack be installed with ample time and this was in June. Arthur did not have a phone jack in his room and he did not have the right to contact the doctor or call 911 if he had a crisis.

She visited there about 2 or 3 times and was denied twice to access the building and the manager told her twice that AT&T was on their way and would be coming today or tomorrow and constantly staving off this not seeing it as a necessity, not seeing a person's right to have a phone jack. Whatever authority the Board has, she wanted to make sure these people have their habitability rights taken care of.

Kelly Spearman, tenant at the Warfield Hotel, shared one bathroom and tub and he has AIDS, vertigo and Rye Syndrome. It was filthy with bedbugs, a lot of roaches and dirty carpet. They have no privacy and no access for visitors, no phone in the lobby or bathroom and they were rude. His doctor wrote a note that he needed a bathroom, which was difficult and the building is filthy. The environment is ugly and there was no shower heads in the bathroom and no notice when the water is turned off. The garbage area is very bad. Two people had TB from that area in the 2nd and 3rd floor and no sanitation for the garbage. There were no mirrors for grooming for him and his wife but the bedbugs are a very serious issue with scars on his back, which his doctor had prescribed medicated soap. He has been there for awhile and did not want to leave but it needed changes.

President Clinch called for public comment.

Arthur Bray, tenant at the Warfield Hotel, said there was a major issue with no heat in the building and he shivered at night and cannot sleep. The condition is very unsanitary to the max and they do not clean the bathroom and the trash is not disposed of. There has been severe harassment of tenant's visitors. He is grateful for housing but does not approve of paying rent for no heat. He lived there for about 5 years and the conditions of the building were filthy and the elevator breaks down every two weeks. There are a lot of seniors and disabled people in wheel chairs who have problems getting downstairs.

They do not appreciate their visitors or guests being harassed using the bathroom in the hallway with cameras installed in the hallways. Whenever they approached management with negotiations, they blatantly lied to them or turned a deaf ear and he gave up waiting another 6 months for the phone jack that they refused to install in his room. The tenants do not exist unless it is check day and that was what he was trying to say. It was like a magic trick which they exist momentarily to pay rent and then they disappear again.

Anthony Boyle, former tenant, said he used to live at the hotel for two years and testified it was all true and it was so horrendous that he moved last spring. The elevator being out, the bedbugs, the horrendous hallways and he wanted to support and serve justice to the people who still live there.

There was no further public comment and no Department rebuttal.

Henry Karnilowicz, Agent for the owner, said the issue was not about the issues the tenants have raised. There is no doubt that these hotels have these problems and they are not the only one that runs on the location of Taylor and Turk.

He recalled a few years ago in another hotel and while walking there were bullets flying around and police cars and it is a very rough area and very hard to maintain these places with the tenants themselves with all kinds of problems. It was very hard work to maintain from cockroaches and rotten food left there and sitting in their room with a lot of issues. They should look mainly at the bathroom and concentrate on that and the other issues were separate that were not their concern at this time. If the Commission decided they need to add more bathrooms, they will certainly consider that but will need time until it becomes vacant and that was where they were at now.

Commissioner McCarthy asked how much time he was talking about. Mr. Karnilowicz said when the room becomes vacant he would like to ask for 3-6 months.

Commissioner Walker thanked the tenants who came and spoke about this issue. She believes that some of these projects came forward, and this was one of the reasons why they have funded the Code Enforcement Outreach Program because the people doing the work try to help the landlords make these conditions habitable which was really the point and it worked very well.

Commissioner Walker appreciated the work that the Code Enforcement Outreach Program did with the Housing Division, and she thought about what it would be like to live in these conditions and Mr. Karnilowicz's client had taken on a building that needed a lot of work. This was one of the situations when they could really do something to help the landlord to make the conditions better there. She felt that a good solution was offered to allow time to have an empty unit with a bathroom that was private to be made public as a reasonable option to them and for the people living in the building and the owner of the building.

Commissioner McCarthy said they did not discuss the timeframe and Mr. Karnilowicz mentioned 3-6 months, but immediately they probably could organize on each floor in the bedrooms a secondary bathroom. Could that be organized? Mr. Karnilowicz said they wish they could but they cannot and the rooms should have bathrooms in them, and there was no way to cut into a door to take that away from the tenant that was in that room and go to half a bathroom decreasing the use for the tenant.

Inspector Bosque said when the Board asked Mr. Karnilowicz if the guest rooms that had bathrooms were all occupied by residential or tourist residents was that answered. If they were tourist and shorter terms, some of those rooms may become available or are they residential.

Even though a building has residential and tourist rooms and can be used primarily for residential, the fact of the matter is that what most of the operators do is realize they can have residential use but it can be shorter than a 7-day period or shorter and it can be more transient.

From that standpoint, the Devy Law that was required by the Hotel Conversion Ordinance would not necessarily tell them but they do have a list of what those rooms are and it maybe some of those rooms may come up with earlier than 3-6 months to be able to do that or that was just the possible alternative. The property owner may have a vacant room that may be a tourist room right now that they can use as a portion of that to do a conversion with a building permit. Since these were not all residential rooms, they can decrease the number of tourist rooms without any impact to the Hotel Conversion Ordinance so there is that option and they can do that right now.

Commissioner McCarthy asked in past cases if there was a hotel that wanted to comply, what has been the time frame? Inspector Bosque said in most situations, most of the residential hotels do not have private bathrooms they have to take one of the guest rooms and convert it into a sanitation facility that they need. DBI tries to work with them when that results in a reduction of a residential guest room designated by the Hotel Conversion Ordinance, but as you can see they have plenty of tourist rooms on each floor, any one of which if they can become vacant they can use that.

The number of residential and tourist rooms and how they are used can change in the building. Room one today can be used for residential and tomorrow, if that is validly vacant, it can be used as tourist so they move around the building. After talking with her Inspectors, there may be at least one guest room for each floor that may become available that they could use for a conversion to a bathroom. As far as it being vacant, it could be used in the future as a residential or tourist room depending upon how many they have occupied in any given day and that is why they have to keep a daily log.

Commissioner McCarthy said Plan A as a compromised plan if possible to facilitate and the final plan with regard to having the bathrooms up to Code, how long would the hotel be allowed if they were to pull the permit.

Inspector Bosque said this was a 30-day notice which was very typical and they get the owner to the process and try to work with them. As provocative as it was going through the Board rather than going through the process with a Director's Hearing, they would generally force the property owner to comply within 3 months or earlier because these people only have one shower. Commissioner Lee asked when the Department found out about it. Ms. Bosque said most likely the other Notice of Violation and it may be cited there as well, they inspected the garbage room on the floor to see if it was ever used as a shower room but they cannot validate that. At some point in time there could have been another shower in this building by virtue of the fact there were private bathrooms, because they did not know and there were no plans readily available.

Commissioner McCarthy believed the hotel lessee would like to comply. He asked Ms. Tekkey in regards to this kind of negotiation what she thought would be a fair timeframe for them to comply? Ms. Tekkey said it is challenging in terms of the vacant rooms for them to change it, nobody monitors it and she disagreed that this was the right framework to go with. This notice

was given since August so they had ample time to do something but nothing was done. She dealt with this bathroom issue in another hotel and it was done within a month or less.

Commissioner McCarthy said from a construction perspective, he wanted to be realistic so there would be no situation but a month's time is a lot of action. Inspector Bosque wanted them to get the permit and get the process started. It had been extended now and 3-6 months construction can be easily done by then.

Commissioner Lee said Commissioner McCarthy asked for Inspector Bosque's experience on dealing with those situations and knowing about these tenants in these residential units. They wanted to get some idea of how often tenants turnover and if there is a vacant soon.

Ms. Honey gave a specific example, and said yesterday she went through a list of 20 people. There was a meeting at the Warfield Hotel about 7-8 months ago and they held a meeting in their office. She contacted these tenants and 80% of them indicated they had moved out and it was a very high turnover rate for 6 months.

Commissioner Mar said before they get into the specifics about the date when they should put in a bathroom that he was not that inclined to extend it, and to him there were not that many bathrooms to put in and talking about putting only 1 or 2 per floor. There is a Catch 22 here, and why were there so many other things outstanding besides the bathroom.

He was glad working with the SR collaborative and other organizers to deal with the building inspectors but they are not a replacement for their inspectors. Part of the problem the inspector had to write up the violations and that was the only thing that puts heat on the lessee or the owner. It was great that the organizers were trying to work with the landlords but do not wait until after you were not allowed in before you contact the Commission.

The Housing Inspectors had to inspect anyway and they should not wait until the Collaborative invited them in. There had to be some regular inspections and that was why it had taken so long. He believed that without the inspectors, who cannot be stopped from going in and that is the reason they have ID badges and drive City vehicles. The landlord, lessee and the manager cannot stop them from entering the rooms they wanted to see.

Inspector Bosque said it was not correct to say the Inspectors waited for the Collaborative to invite them in, and they are in these buildings constantly. The problem is an Inspector is not a substitute for good management of a property and that was what Commissioner Mar said. They wrote a notice for compliance and it gets repaired and then breaks. In those situations where they can document that, as was done with the Grand Southern and other buildings. For those in the Litigation Committee they refer those cases to them and ask them to be referred to the City Attorney. In this instance, they were participating in a City Attorney Task Force effort on this property and if that did not result in things being repaired then the Litigation Committee will probably see this case before it. It would not be the first time that the Warfield has gone through that particular course and she wanted to clarify that issue.

However, they cannot be everywhere and they have about 5 vacancies she is trying to fill and it was definitely their intent to be in these buildings as often as possible to change how they were being operated, but they will never be able to step into the shoes of onsite management and they do not have the ability to do that.

Commissioner Walker said she believed it was very important to remember the reasons the Board put this Code Enforcement Outreach Program together and funded it because tenants often times were afraid to talk to City representatives and it was an outreach of our Inspectors. They were doing the initial meeting, grades, and interviews and discussed things with the tenants and then hopefully passed it along immediately to their Department so that they know because they have a Housing Division that was sort of nationally renowned for its proactive inspections. Clearly they have a lot of buildings in inventory that have habitability issues and have been a priority for the Department and that was why they have the tenant organizers assisting them.

Commissioner Walker made a motion, seconded by Commissioner Mar, to uphold the Department's recommendation that they set a time limit of a month to file for the permit and 3 months to initiate it or put it together. It seemed to be a reasonable amount of time and if the owner wanted to do it or whether they wanted to take one of the tourist units off or make public a private bathroom is kind of up to them.

Mr. Karnilowicz believed it should work for them. The rooms with the private bathrooms actually faced the common corridors. It will be a job but he thinks they could at least apply for a permit within 30 days that should not be difficult to do, and as soon as the rooms become vacant they could provide extra bathrooms.

Ben Ng wanted to reiterate what Commissioner Walker and Inspector Bosque mentioned about why this whole program was designed. The Code Enforcement Outreach Program (CEOP) was here to leverage some of the work that DBI does. When they went into the buildings they were able to resolve some of the issues between management and tenants to avoid the Building Inspector's inspection for another time for more severe building issues.

Their role works with much more leverage between the tenants and to understand what their specific issues were. Inspector Bosque said the Department is short staffed so the primary purpose of this program is designed for them to step in to resolve these issues as quickly as possible and without passing forward to the Building Inspectors. They had many opportunities to work with the landlord and managers and that was why they were passing forth this case. It was not that they did not want to contact the DBI firsthand but the fact that they were given this opportunity to actually work with the tenants to have a better understanding of the internal issues prior to contacting the Building Inspectors to step in to do the inspection.

Commissioner Walker said when they heard about conditions like these, it was everyone's responsibility and it should not be the case. Whatever it was that the Board needed to do to help the landlord make conditions better they wanted and needed to do it and it was not OK.

Commission Secretary Aherne verified that ***there is a motion that the Appellant obtain permits within 30-days and have 3 months to get the work started and completed as soon as possible***

and to uphold what the Department is recommending. Commissioner Lee clarified that they were looking for a permanent solution within 3 months.

Commission Secretary Aherne called a roll call vote:

<i>President Clinch</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray, Jr.</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried unanimously.

Commission Secretary Aherne asked if there was any general public comment related to the Abatement Appeals Board.

Inspector Bosque addressed the Chair and the City Attorney, and said this was a waiving of the Director's Hearing going right to the AAB. The AAB was issuing an Order to that fact and the question she had is if an Order of Abatement will be recorded or something else, because that would be the question before the Hearing Officer at the Director's Hearing?

Attorney Clark said she looked at the Code Section and it was not clear from the Codes. Basically it said that the Board was hearing a direct appeal pursuant to Section 102A and to uphold, modify or reverse such Orders and it did not clarify or it was not clear. There was no Order of Abatement from DBI and stepped into the shoes of the Building Official. She understood her question but not exactly sure what the answer was and needed to look into it. She thinks that you issue an Order of Abatement as if you were at the Director's Hearing and by coming directly here then the appeal that would normally happen after that does not occur. If that makes sense, she believed that they were in effect issuing an Order of Abatement.

Inspector Bosque said that was what staff would prefer. Commissioner Walker said instead of upholding it they were issuing it. Inspector Bosque said in addition they would prepare an Order but they would have a Notice of Decision that would be attached to that. Attorney Clark said that was her understanding based on what was in front of her but if it was any different she will let them know immediately.

Mr. Karnilowicz said he wanted to stay the Order of Abatement and would like to move on with this, and it was unfair for the owner to do that. Inspector Bosque said his client waived the Hearing before the Board and is subject to that action.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items that were on the Abatement Appeals Board Agenda.

G. ADJOURNMENT

President Clinch made a motion, seconded by Commissioner Mar, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 10:04 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, December 19, 2012 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

**GOVERNMENT
DOCUMENTS DEPT**

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6766: 3825-3829 24th Street

Owner of Record and Appellant: Shaw, Susanna, 3831 – 24th Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Appellant is requesting more time to complete required work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6767: 3825-3829 24th Street

Owner of Record and Appellant: Shaw, Susanna, 3831 – 24th Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Appellant is requesting more time to complete required work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142

Myrna Melgar, Vice President Sonya Harris, BIC Secretary (415) 558-6164

Frank Lee, Commissioner Teresita Sulit, Recording Secretary (415) 558-6267

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney (415) 554-4634

3. CASE NO. 6768: 3831 - 24th Street

Owner of Record and Appellant: Shaw, Susanna, 3831 – 24th Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Appellant is requesting more time to complete required work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

4. CASE NO. 6769: 3835 24th Street

Owner of Record and Appellant: Shaw, Susanna, 3831 – 24th Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Appellant is requesting more time to complete required work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

5. CASE NO. 6770: 1018 Noe Street

Owner of Record and Appellant: Shaw, Susanna, 3831 – 24th Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Appellant is requesting more time to complete required work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

D. GENERAL PUBLIC COMMENT

E. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

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POLICY STATEMENT OF PUBLIC HEARING OR MEETING

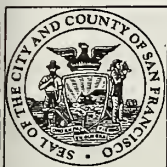
Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112; web site: sfgov.org/ethics.



ABATEMENT APPEALS BOARD

Wednesday, December 19, 2012 at 9:10 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED April 17, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, December 19, 2012 was called to order at 9:10 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch President

Myrna Melgar Vice-President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

Sonya Harris, Building Inspection Commission Secretary

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D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Rosemary Bosque, Chief Housing Inspector

Steve Mungovan, Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. NEW APPEALS: Order(s) of Abatement

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal, discussion and public comment.

- 1. CASE NO. 6766: 3825-3829 – 24th Street**
- 2. CASE NO. 6767: 3825-3829 – 24th Street**
- 3. CASE NO. 6768: 3831 – 24th Street**
- 4. CASE NO. 6769: 3835 – 24th Street**
- 5. CASE NO. 6770: 1018 Noe Street**

Owner of Record and Appellant: Susanna Shaw, 3831 – 24th Street, San Francisco, CA 94114

ACTION REQUESTED BY APPELLANT: Requesting more time to complete required work.

NOTICE OF DECISION: After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: The AAB voted to uphold the Order of Abatement and to impose the Assessment of Costs. Appellant is given three months to obtain the necessary permit and three months to complete all work including final inspection approval. All time periods specified in this decision become effective on the date of the Notice of Decision dated September 28, 2012.

Rosemary Bosque, Chief Housing Inspector, said as a housekeeping matter, she wanted to let the Board know that the Agenda, Items 1 through 4 are related to the same property, which is 3825-3829 - 24th Street and the open cases were all considered as part of one Order of Abatement and she will address them all at one time.

Inspector Bosque explained that there were so many other details to include which were not in the staff report, and this would also include Agenda Item 5, which is the Noe Street property all owned by the same property owner. This is a City Attorney case and these two properties and the third property at the 3300 block of 24th Street were part of the City Attorney referral that went through the Litigation Committee and went on to the City Attorney. A lawsuit was filed against this property owner in March of this year for failing to comply with the San Francisco Housing Code, having numerous Notices of Violation and Orders of Abatement on the two properties before the Board and the other properties.

As a point of reference regarding the inability of this property owner to maintain her property, the property that is not before the Board on the 3300 block of 24th Street required an Emergency Order to be issued. There was a fire at that property and someone was very devastatingly injured. It was not the staff's opinion, based on the information detailed in the photographic evidence, the Notices of Violation and the chronologies regarding both the Noe Street and the 24th Street properties that were before the Board today, that these were cases that warrant additional time.

The property owner has had sufficient time. As she indicated, a lawsuit was filed in March of this year. The City Attorney worked with the property owner's attorney on this to get compliance and with respect to the fact that a tremendous amount of time had occurred and they have the same pattern repeating itself. Not unlike Mr. Blanding and that was a failure to comply

or maintain the property in a timely manner, a constant failure to respond to Notices of Violation in a timely manner, a failure to obtain the requisite required permits, detail the correct description of the scope of work, a failure to take out permits when they were required and recurring violations.

They had a situation where the two properties had condominium subdivision. Although it was their understanding Ms. Shaw was still the property owner for both of the properties that were before the Board, Agenda Items 1 through 5 that was the 24th Street and Noe Street properties. On the basis of site inspections, they found these violations recurred and the subsequent permits were required to do the repairs. There was lengthy evidence of outstanding violations. The field inspector did repeated inspections and the information and case was forwarded to the Deputy City Attorney in charge.

On the basis of that, staff does not feel that these cases specifically Agenda Items 1 through 5, warrant additional time, and the filing of the lawsuit will address these issues. The inspector who performed those inspections was present and there was a tremendous amount of detail to this. There were 20 pages on the complaints and she stopped counting after he referenced the 8 or 9 Orders of Abatement. The staff strongly recommended that no additional time should be given in this case.

Susanna Shaw, the Appellant, said she wanted to appeal. On August 9th, she went to a Director's Hearing and that was the first time she had any knowledge of the other four cases and they were not received in 2009. The tenant gave her the posting on her building at 1016-1020 Noe Street and she resided at 3825 - 24th Street. The four cases involved units in her building and the building next door but there were no postings.

Ms. Shaw said when she received information on the cases, she immediately noticed that all four of them contained items. In 1990, she purchased this building which originally was a 6-unit building on 24th Street near Church Street. The former owners warned her about the problems with the tenants. They had been partners for 30 years but were selling because they had problems dealing with the tenants. She believed she could manage the problems with the difficult tenants because she was in her 40s.

In 1994, she legitimately increased the rental and the tenants notified the Housing Department. They have three other units of complaints and three NOV's filed against her buildings, including the fire damaged building at 3356 - 24th Street. There were rent strikes and 16 death threat calls by the same person, hanging up and calling back and a sign placed on her door to "lynch the landlord." She went into bankruptcy partly because of the rent strikes and finally burst in 2005. Since that time, she had three NOV's at 3825-3829 - 24th Street, three NOV's at 3831-3835 - 24th Street and about five NOV's on the fire damaged building. She immediately complied with the Housing Department and worked on the adjacent building next door. She later converted the building into condos and applied for three separate loans.

Inspector Ivan Sarkany brought out the file and on one of the lists, a Building Inspector had marked the list with about 20 items and each item was circled in red ink. She informed Inspector Sarkany that someone already came out and checked this list and he accused her of forgery and

grabbed the file and refused to give her the copies. These three cases appeared on her file report and she cannot refinance the property with a lender until the outstanding abatements were complied with.

She had three condo conversions on her buildings and had not met Inspector Bosque but expected to speak with level headed professional Building Inspectors. Chief Inspector Bosque came out with Senior Inspector David Gogna, and Ivan Sarkany and all three screamed at her and accused her of forging this list and threatened to send it to the City Attorney to prosecute her. Her attorney eventually picked up these three cases and she believed it was complied with in 2006 even though they reappeared on these four notices from 2009. At the same time, Inspector Gogna denied that she ever cleared them and she was not aware that Inspector Isabel Olivares inspected her Noe Street property and entered the passage way, which was twice unlocked and wrote four pages of items including the back staircase which was completed with a permit in 2001. It was completely redone and they had permits and plans to remove and replace the old staircase.

At that point, she believed that she was targeted by the Housing Department and basically holds Inspector Bosque responsible for keeping up a toxic environment in her Department for years and she could have stopped it at any time but it continued. She is 62 and cannot tolerate any more and it was not true that she had done work without permits. At least two of her buildings were converted into condos with certificates for final completion and electrical permits for the heaters. She often applied for permits and was used to dealing with very level headed people at the Building Department but they denied her filed Appeal.

Ms. Shaw's time was up but Deputy City Attorney Clark said it was up to the Board's rules and procedures because there were five separate matters and the Department presented all in one and it was not fair to limit her time. The Board approved and allowed her an additional three minutes to speak.

Ms. Shaw said when the Appeal was filed, the Housing Inspectors checked their computers and found that none of the three cases were cleared on that building. She went to the Housing Department the next day and they found one of the revocations on file for Complaint 167806 and that all three cases were cleared. She later realized the Records Department had destroyed all the cases two years ago and therefore not all records were in the computer. The cases were not recorded but they were finally abated and these cases were included as they were highly inflammatory items.

There was a lawsuit filed after the fire because she had limited liability insurance and the City Attorney filed a suit four days later without checking any allegations in the lawsuit that supported them. They were totally false and it was the Department's priority to aid these people. Her building was included in the lawsuit because they wanted to help and she believed that this was an abuse of power and the public's trust. When she looked at these papers and she is a citizen, they must be right because they were part of the Building Department but she realized that they had destroyed records which can verify she had complied with all of them. The Housing Department should not have destroyed any records and she was extremely shocked but the items were finally cleared in about eight months.

Three years ago, she filed a complaint to Ed Sweeney about Inspector Bosque on the Noe Street situation with the back staircase. Mr. Sweeney informed her that Inspector Bosque denied she was targeted but she believed there was some kind of a secret contempt because Inspector Bosque took advantage of the Board's nature of the Building Inspection and all she had to do was deny it. She was frightened and has been mistreated for seven years and she will not tolerate this anymore. In addition, she was frustrated and scared that her building had a fire and people were injured.

Commissioner McCarthy asked for a brief explanation of Ms. Shaw's attempts for compliance? Ms. Shaw said they worked with Inspector Mungovan and a lot was done. Yesterday she met with the City Attorney and it was a very productive meeting. Most of the fire damaged buildings were corrected over the years. When she went into bankruptcy, it was a contested case and she probably lost over a million dollars because of that. It was one struggle after another and her bankruptcy attorney, David Ruplico, was jailed for first degree murder and finally the Housing Department closed the case. There were many difficult times dealing with the Housing Department and it was one horrible situation after another in her life.

When she came to the Building Department, she was asked if Inspector Bosque had targeted her and she was shocked they mentioned a few days later if she planned to sue for harassment and did not know that possibility existed because she was not litigious. She converted her buildings into condos that were inherited as a family business. Her parents started the business in San Francisco in 1952 and she always loved the building.

Commissioner Walker said they were at the hearing because there were outstanding Notices of Violation. Ms. Shaw admitted that there were issues listed that needed be resolved and she worked on them. Commissioner Walker said the issue with the Department was that this went back awhile ago and in the meantime, one of her properties had a fire and the Board's job was to make sure that the buildings are safe and habitable. She believed that from looking at the pictures and reading the documents that the Housing Department did what they were required to resolve the outstanding violations that affected the habitability. Ms. Shaw admitted the issues listed were being worked on.

Ms. Shaw said she tried to explain after that incident in 2006. Inspector Oliveras inspected her Noe Street property and she felt targeted at that point and was afraid of these people. She came before the Board and asked for time, but wanted this situation to change and was afraid that these people and the Department was a bad relationship. After her bankruptcy, she went to the Housing division and wanted to clear her properties. She wanted to get everything done but could not withstand the bullying and intimidation, since they were powerful in a public position and to find these cases supposedly in compliance but still outstanding baffled her.

Commissioner Walker said it was the Board's job to make sure the violations were in compliance and that was not the case. Ms. Shaw believed they were in compliance and the Department should not have destroyed records and included the old cases. She said there was a Revocation of the Order and possibly two more and she searched for her papers because Records Management destroyed the tapes. There were two more that were already cleared and these inflammatory items were included to help people who filed lawsuits which portrayed she had

horrible properties and confiscated her properties. She believed it was an abuse of the public's trust when these situations no longer existed.

Commissioner Walker said it appeared that they were. Ms. Shaw said she read this from the paper and assumed that it must be true and she was the public and this abused that trust. She showed the Board the Revocation of the Order but assumed that did not count. Commissioner Walker said this was not the issue in front of them.

Vice President Melgar said she wanted to put this into context: She is a landlord doing a business, such as a restaurant or any other for profit enterprise and must operate according to the rules. Ms. Shaw wanted to be in the business but there are Codes for a reason because people did what they were supposed to do and the taxpayers hired them did not mean that they abused the public's trust. The Board has pictures including records and all sorts of evidence, and Ms. Shaw presented very little evidence to the contrary.

Vice-President Melgar said Ms. Shaw must be a very wealthy woman since she owned a lot of real estate in one of the most expensive areas in San Francisco. She had resources and assets that would allow her to fix the problems in at least some of her buildings and she owned significantly more than that. Her bankruptcy was 7 years ago and she had options. She wondered why Ms. Shaw believed that she was victimized by this Department when the Department followed the rules.

Ms. Shaw said she had debts of \$4 million and there was also rent control. She explained what happened 7 years ago and reiterated that she was targeted and holds Inspector Bosque responsible. Vice President Melgar said it was her job to protect the tenants. Ms. Shaw wondered why she was screamed at and the Department did not follow up with Inspector Alex Fong to ask if he made that inspection. She was frustrated and wanted that hostile situation to change and hopefully a potential turning point in her life.

Commissioner Mar said aside from what she believed was a hostile environment, she should resolve some of the NOV's and submit some paperwork on violations that were resolved. She could request more time if needed but the Department wanted to know she at least applied for certain permits and evidence of documents such as the application for an Electrical or Plumbing permit.

Ms. Shaw said she did not have them but gave Inspector Steve Mungovan the recent building permit for the floor of the stairwell and expected he had seen that. Commissioner Mar said those were the things they need to deal with and to see some progress or some of the work that was done. They wanted to see if she had applied or at least started and if it were listed, they could ask the staff later. Ms. Shaw said Inspector Mungovan had the permits and can verify the back staircase was totally done, and a couple of handrails inside the apartment were done. Commissioner Mar said they could try to verify it.

Inspector Bosque rebutted there were a lot of records and she had researched tremendously on the filed permits such as the Electrical permits that were discussed. They found the third conversion but no permit to legalize heaters that were installed in the 24th Street building or

there would be a note with calculations for some of the heaters. It was that kind of pattern, one thing after another. They had spent a tremendous amount of hours and the staff worked with her to assist her through the process. The notices were issued in 2009 and several years later, this process started before the Notices of Violation were issued that was never resolved.

Inspector Bosque said were there some notices currently being resolved? Yes, they filed lawsuits to force Ms. Shaw to comply. Currently there was some movement and hopefully that will help them get final resolution, which they preferred to do with three of these properties. Did staff believe because of the history before the Board that this warrants an additional extension of time? No, staff believed that an Order should be issued and recorded on the property so that anybody that moved into this building had ample notice and that was how the process was supposed to work. The Hearing Officers were right in what they did, given the gravity and the extent of the information that both Ms. Shaw and the Board has on these two properties. No additional time should be given and that process is an important code enforcement tool that was consistent with everything else that the Board had before them.

Commissioner Lee asked what were some of the outstanding items that needed to be fixed so they had an idea of what was left to do? Inspector Bosque said Inspector Steve Mungovan, field Inspector, was on the site and he could briefly give the Board a running list of things that were ongoing.

Inspector Mungovan said on 24th Street there were a number of violations: Roof leaks, electric heaters installed in six units without permits, window sashes in disrepair, missing handrails or handrails installed improperly. On the roofing, there were several layers of roof and he had not been there but had some pictures. There were supposed to be at least three layers in certain areas and there was probably four or five and the composition of the roofing was so worn out that it was actually frayed. There were no permits for ever having re-roofed. He would expect that the original roof, a wood shingle roof was there and at least three layers of roof, which he guessed was more like four or five.

Commissioner McCarthy said when Inspector Mungovan itemized these items, they were not huge dollar amount items and the roofing was probably the highest. He asked if he had met the contractor? Inspector Mungovan said he had not met the contractor on the site. Commissioner McCarthy asked if there was a contractor assigned? Inspector Mungovan said Ms. Shaw had people who worked for her and they were not introduced to him as contractors and he viewed them more as laborers.

Commissioner Melgar asked if there were children under 6 living in any of these buildings? Inspector Mungovan said he did not know but did not believe so. Commissioner McCarthy asked Inspector Bosque if she knew what caused the fire? Inspector Bosque said she did not know exactly what caused the fire at the 3300 block but there were open violations at that building, which included smoke detectors and an illegal unit down on the ground floor area and the Department issued an emergency order.

President Clinch said the Department had no more questions. He asked for the Appellant's rebuttal.

Ms Shaw said she had Electrical permits and other permits, there was also another Hearing on June 21st and they said there were no permits for the back staircase. She did get a permit in 2010 for the back staircase and it was completed but they could not find any permit for the repeated Violation Notices about the heaters. She went to the Permit Section and found the permits within two minutes. They were to comply with the 3-R report for the condo conversion and she had the Electrical and a physical inspection for the condo conversions that was required. On the Electrical Inspectors' report when they inspected the buildings, they wanted compliance with what was written on the report. She had the Electrical on both buildings and immediately found it.

Ms. Shaw said from her bad experience, they did not spend a lot of time and she was often accused of not having permits and wanted changes to the hostile environment. She is 62 years old and cannot tolerate it anymore and she hoped for some sort of change but most likely it will not happen. Ms. Shaw said she brought the 2009 permits with her for the heaters and they were from her buildings at 3825-3829 – 24th Street and 3831-3835 – 24th Street. She was unsure if she gave the Board her Certificate of Final Completion (CFC). President Clinch confirmed yes.

Ms. Shaw said that was the Revocation of Order to comply with the Building, Electrical and Plumbing. There were conflicts between these Departments and according to the Building Department, they passed it for the code violations that were corrected. Commissioner Walker said she thought that the conditions of these buildings made these uninhabitable even though people were living in them and the issues of unpermitted electric heaters and those types of things made it a real risk for a fire.

Commissioner Walker made a motion, seconded by Commissioner Melgar, to uphold the Department's recommendation, the Order of Abatement, and maybe allow 30 days to take out permits and resolve these issues.

Attorney Clark said she wanted to clarify Commissioner Walker's motion. Commissioner Walker said the Department had habitability issues on the violations on these properties and it made the buildings unsafe to occupy, even though they were occupied and the potential risk for fire, the mold that they see, and the evidence presented all were health risks for the people living in them. Therefore, she believed that it was imperative for them to support the Department's action of abatement and allow for the maximum of 30 days to take out the permits and cure these Notices of Violation.

Attorney Clark clarified Commissioner Walker's motion to uphold the Order of Abatement and allow 30 days to complete the work based on the Board's findings that the evidence presented by DBI supported the Director's Order of Abatement as issued. Inspector Bosque said the motion was to issue a 30-day Order of Abatement and for Agenda, Items 1 through 5. Commissioner Lee said he believed 30 days was fair because the type of violations left were not long and large items. They should be able to take care of it in 30 days

There was no public comment. Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray, Jr.</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The vote carried unanimously.

D. GENERAL PUBLIC COMMENTS

There were no General Public Comments for items that were on the Abatement Appeal Board Agenda and they moved to adjournment.

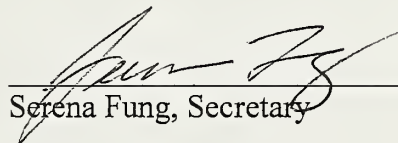
E. ADJOURNMENT

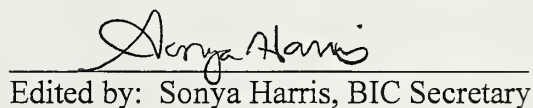
President Clinch made a motion, seconded by Commissioner Mar that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 9:55 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, February 20, 2013 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on October 24, 2012.

D. NEW APPEALS: Order(s) of Abatement.

1. CASE NO. 6771: 4757 - 25th Street

Owner of Record and Appellant: Rhodes Geraldine C Estate O, 106 Wybel Ln.,
Cary, NC 27513

Agent for the Appellant: James Grossman, 975 Baker Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: The appellant is requesting that the Order of Abatement be revoked and the Assessment of Costs be waived.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

2. CASE NO. 6773: 1316-22 Mariposa Street

Owner of Record and Appellant: Richard E. Thomas, Environment & Land
Management, P.O. Box 877, San Leandro, CA 94577

MEMBERS OF THE BOARD

Kevin Clinch, President
Myrna Melgar, Vice President
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner
Dr. James McCray, Jr., Commissioner
Debra Walker, Commissioner

DEPARTMENT REPRESENTATIVES

Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142
Sonya Harris, BIC Secretary (415) 558-6164
Teresita Sulit, Recording Secretary (415) 558-6267

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney (415) 554-4634

ACTION REQUESTED BY APPELLANT: The appellant is requesting that the Order be reversed and that he be reimbursed for the cost of this appeal.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. Request for Jurisdiction:

- 1. CASE NO. 6772: 3558 San Bruno Avenue, 3562 San Bruno Ave., #1 & #2, and 3580 San Bruno Ave., #1 to #4**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting more time to complete the work and waiving of assessment of costs.

- 2. CASE NO. 6774: 3556-64 San Bruno Avenue AKA 1265 Girard Street**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting the waiving of all assessment of costs.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

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POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112; web site: sfgov.org/ethics.



ABATEMENT APPEALS BOARD

Wednesday, February 20, 2013 at 9:10 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED April 17, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, February 20, 2013 was called to order at 9:10 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch President

Myrna Melgar Vice-President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner (Excused)

Debra Walker, Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Rosemary Bosque, Chief Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on October 24, 2012.

Commissioner Walker made a motion, seconded by President Clinch, to approve the October 24, 2012 minutes.

Commission Secretary Harris called for public comment on the minutes and there was none.

The motion carried unanimously.

D. NEW APPEALS: Order(s) of Abatement

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal, discussion and public comment.

1. CASE NO. 6771: 4757 – 25th Street

Owner of Record and Appellant: Rhodes Geraldine C Estate O, 106 Wybel Ln., Cary, NC 27513

Agent for the Appellant: James Grossman, 975 Baker Street, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: The Appellant is requesting that the Order of Abatement be revoked and the Assessment of Costs be waived.

NOTICE OF DECISION: After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: Based on the recommendations of staff, the AAB voted to reverse the Order of Abatement and not assess fees. All time periods specified in this decision become effective on the date of the Notice of Decision dated March 1, 2013.

Inspector John Hinchion, Code Enforcement Division, said in reviewing this case for the Board, they discovered that the Executor of the Estate had all the permits and cleared the violations, the inspections were done, permit signed off, so taking that into consideration, they would recommend that the Board grant the Appellant's request and it would be appropriate that there would be no Assessment of Cost.

Deputy City Attorney Jana Clark said the Appellant had requested to reverse the Order of Abatement and Assessment of Cost and believed this required the Board to act and vote and to have public comment.

Commission Secretary Harris asked if the Appellant was present and if they would like to speak : Rhodes Geraldine C Estate O, Appellant, asked if the recommendation was to reverse the Order and to negate the fees. He was in total agreement with that and appreciated it.

Commissioner Lee said it was the Department's recommendation and the Appellant could say anything to them. Rhodes Geraldine C Estate O, Appellant, said they were glad and appreciated the action was considered and the recommendations were positive.

President Clinch said they needed a motion. Commission Secretary Harris said there was no additional public comment on this item.

Commissioner Walker made a motion, seconded by Vice President Melgar, to take the

recommendation of staff and reverse the action and not assess the fees.

Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried unanimously.

2. CASE NO. 6773: 1316-22 Mariposa Street

Owner of Record and Appellant: Richard E. Thomas, Environment & Land Management, P.O. Box 877, San Leandro, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting that the Order be reversed and that he be reimbursed for the cost of this Appeal.

At the request of the Appellant, and with the consent of the AAB President and the Department of Building Inspection, the AAB secretary granted a continuance of the matter for 30 days.

Inspector Rosemary Bosque, Chief Housing Inspector, said she understood the Appellant on these items had requested a continuance and she did not believe he was present.

Commission Secretary Harris said the Appellant requested a continuance on all three cases and Edward Sweeney, Secretary to the Board, granted his request for continuance and required the Board to have a vote.

Commissioner Lee asked if this was just a motion or a vote? Attorney Clark said she believed the President could grant the continuance if the Department concurred and there were no objections by any of the parties. President Clinch asked if there was any public comment? He granted the continuance. Attorney Clark clarified that was for all three matters and asked if the Board wanted to list them to make the record clear.

Commissioner Lee asked for clarification on the other two matters. He understood one of them was a request for jurisdiction and asked if the last one was a request for jurisdiction as well? Inspector Bosque said the two remaining cases, one is eight cases that were clearly filed way after the 15-day period after the Orders were issued and then the other case was a situation where the property owner appealed to the Board to waive the Assessment of Costs, which was not attached and there was no Order. There had been time spent on the case and the Board had some substantive information in the staff report with respect to a building permit.

Commission Secretary Harris said for the record, Case No. 6773, 1316-1322 Mariposa Street would be continued.

E. REQUEST FOR JURISDICTION:

1. **CASE NO. 6772: 3558 San Bruno Avenue, 3562 San Bruno Ave., #1 & #2, and 3580 San Bruno Ave., #1 to #4**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting more time to complete the work and waiving of Assessment of Costs.

At the request of the Appellant, and with the consent of the AAB President and the Department of Building Inspection, the AAB secretary granted a continuance of the matter for 30 days.

2. **CASE NO. 6774: 3556-64 San Bruno Avenue AKA 1265 Girard Street**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the waiving of all assessment of costs.

At the request of the Appellant, and with the consent of the AAB President and the Department of Building Inspection, the AAB secretary granted a continuance of the matter for 30 days.

Commission Secretary Harris said Cases No. 6772 and 6774 would be continued on March 20th.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items that were on the Abatement Appeals Board Agenda.

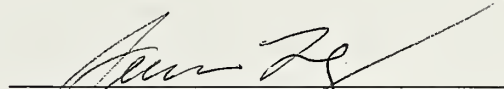
G. ADJOURNMENT

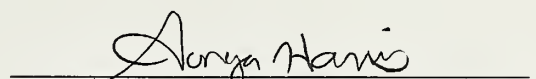
President Clinch made a motion, seconded by Commissioner Walker that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 9:13 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, March 20, 2013 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

GOVERNMENT
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MAR 15 2013

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on November 21, 2012.

D. CONTINUED APPEAL: Order of Abatement.

1. CASE NO. 6773: 1316-22 Mariposa Street

Owner of Record and Appellant: Richard E. Thomas, Environment & Land Management, P.O. Box 877, San Leandro, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting that the Order be reversed and that he be reimbursed for the cost of this appeal.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142
Myrna Melgar, Vice President	Sonya Harris, BIC Secretary (415) 558-6164
Frank Lee, Commissioner	Teresita Sulit, Recording Secretary (415) 558-6267

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney

(415) 554-4634

E. CONTINUED APPEALS: Request for Jurisdiction:

- 1. CASE NO. 6772: 3558 San Bruno Avenue, 3562 San Bruno Ave., #1 & #2, and 3580 San Bruno Ave., #1 to #4**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting more time to complete the work and for a waiver of the assessment of costs.

- 2. CASE NO. 6774: 3556-64 San Bruno Avenue AKA 1265 Girard Street**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting a waiver of the assessment of costs.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, March 20, 2013 at 9:10 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED May 15, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, March 20, 2013 was called to order at 9:10 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch President

Myrna Melgar Vice-President (Excused)

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner (Excused)

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

Sonya Harris, Building Inspection Commission Secretary

GOVERNMENT
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MAY 29 2013

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D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Rosemary Bosque, Chief Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on November 21, 2012.

President Clinch made a motion, seconded by Commissioner Mar, to approve the November 21, 2012 minutes.

Commission Secretary Harris called for public comment and there was none.

The motion carried unanimously.

D. CONTINUED APPEALS:

Order of Abatement (Case No. 6773) and Request for Jurisdiction (Case No. 6772 & Case No. 6774)

1. CASE NO. 6773: 1316-22 Mariposa Street

Owner of Record and Appellant: Richard E. Thomas, Environment & Land Management, P.O. Box 877, San Leandro, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting that the Order be reversed and that he be reimbursed for the cost of this Appeal.

2. CASE NO. 6772: 3558 San Bruno Avenue, 3562 San Bruno Ave., #1 & #2, and 3580 San Bruno Ave., #1 to #4

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting more time to complete the work and waiving of Assessment of Costs.

3. CASE NO. 6774: 3556-64 San Bruno Avenue AKA 1265 Girard Street

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the waiving of all assessment of costs.

At the request of the Appellant, and with the consent of the AAB President and the Department of Building Inspection, the AAB secretary granted a continuance of the matter for 30 days.

Commission Secretary Harris said Case Nos. 6773, 6772 and 6774 have been continued and the continuances have been granted for 30 days. Commissioner Lee said the Board will take each case and start with the Continued Appeal Case No. 6773.

Edward Sweeney, Secretary to the Board, received correspondence from Richard E. Thomas, Appellant, requesting an additional 30 days for continuance due to illness and his lawyer was out of town. He spoke with the City Attorney and Commission Secretary Harris and contacted President Clinch yesterday to ask for permission if he agreed with the Department staff.

According to the City Attorney, President Clinch and Secretary Sweeney decided to give the Appellant an additional 30 days.

Commissioner Lee recalled last month the Appellant asked for a continuance and submitted a letter for a continuance and a letter that he and his engineer were not available due to vacation. Did he submit a letter this time? Secretary Sweeney said there was an additional letter from Mr. Thomas and it was in the Board's package. Commissioner Lee believed it was from last month and Commission Secretary Harris confirmed that there were two letters in the Board's package.

Commissioner Walker wanted to know what the Building Code allowed regarding continuances. Secretary Sweeney said the Building Code allowed one continuance for 60 days and he gave them one continuance for 30 days, but besides the Building Code there was past practices. Inspector Bosque said she was confused about the procedure and wanted to know if the Board or the staff grants the continuance. Commissioner Walker said the Board was asked to grant the continuance and it was on their Agenda.

Attorney Clark said the Appellant requested continuances of all three matters that were on the Agenda and according to the Rule 7.10 as discussed earlier, not the Building Code, but the rules applied to the Abatement Appeals Board, she understood that if there was no objection from the Department and the Secretary has the approval of the President, the Secretary of the Board can continue the matters. The Secretary contacted the President yesterday and he concurred and according to Secretary Sweeney there was no objection from the Department. According to the rules, the continuance can be granted.

They discussed the fact that the Building Code, Section 105.a.2, says that there should be one continuance for 60 days but in light of the stated reasons the fact that the first continuance was for 30 days and there being some ambiguity based on the fact that people had routinely been granted more than one continuance, her advice was that consistent with the rules and the practices of this Board, the continuance could be granted if the Secretary and the President agreed and there were no objections from the Department.

Commissioner Walker said she had not experienced that once an item was on the Agenda, and usually it was the Commission's decision to grant the continuance. She was concerned about the language and that there were two letters of excuses and wanted to draw a line to resolve this case and needed some input from the Commissioners. Commissioner Lee said he would also like to draw a line but the discussion was that they were authorized to give one continuance for 60 days and they gave one continuance for 30 days, so he questioned if the Board should grant a final continuance of another 30 days?

Attorney Clark said there was some ambiguity because the rules that apply to the AAB which is the Rule 7.10 says that if there is a written request to the Secretary and the Secretary has the approval of the President and there was no objection from the Department then the continuance can be granted by the Secretary. If the Department objects, the Appellant has to come before the Board to request a continuance.

Commissioner Lee asked if it were granted, was it for 30 days from now not 60 days? Attorney Clark said she believed Secretary Sweeney notified the Appellant and granted a 30-day continuance. Commissioner Mar said the Hearing had other problems because the four issues will come before the Commission. He wanted to notify the Appellant that they will hear all 4 cases in 30 days regardless if the Appellant or his representative was present and there should be no more excuses.

Commissioner Walker said she was concerned that when they reviewed the calendar if there was any public response to it, and this was one of the reasons why they should not remove from an item from the Agenda prior to the Hearing because she wanted to make sure they were in compliance with the Brown Act and all of the notifications. In reference to the rules in the future, she preferred they address that and send a notice to the public that there might be other options for handling of Appeals or a continuance if it was requested before the actual notice goes out.

Attorney Clark believed there would be many benefits to amending the rules and making these things clear. She wanted to be cautious about discussing what those amendments might be now because amending the rules was not a noticed item. She proposed to circulate some possible solutions to some of the ambiguities. The Board needed to be cautious about proceeding consistently with respect to each person that comes before them and that was her caution yesterday. She thought it would be a good idea to agendaize some possible amendments to the rules. Commissioner Walker confirmed that they put it on their Abatement Appeals Agenda.

Inspector Bosque clarified that they wanted to afford this Appellant the same respect and due processes as any other Appellant that comes before the Board. This is a City Attorney case and while 60 days seemed to be appropriate on the basis of the Board's determination, the Department does have a continuing staff. The Department has a continued concern about the issues at this particular building and if this went beyond the 60-day period they would not agree to that.

Commissioner McCray said this continuance requested a production of documents, and he asked what kind of workload is that or who produced them and does that go with a continuance or denial. Secretary Sweeney said it goes with continuance and he did not know what documents he requested. This case had continued for many months since the first Notice of Violation and he had plenty of time to get any documents. They were involved in court and the Department waited on what he needed from them.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items that were on the Abatement Appeals Board Agenda.

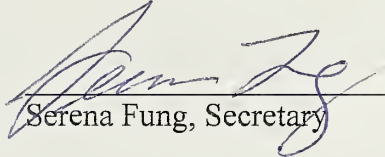
G. ADJOURNMENT

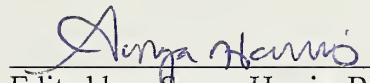
President Clinch made a motion, seconded by Commissioner Walker that the meeting be adjourned.

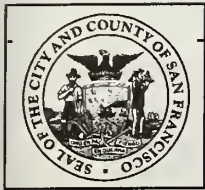
The motion carried unanimously.

The meeting was adjourned at 9:23 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD (AAB)

Department of Building Inspection

Voice (415) 558-6164 - Fax (415) 558-6509

1660 Mission Street, San Francisco, California 94103-2414

Edwin M. Lee
Mayor

April 5, 2013

BOARD MEMBERS

Kevin Clinch
President

Myrna Melgar
Vice-President

Frank Lee
Warren Mar
Angus McCarthy
Dr. James McCray, Jr.
Debra Walker

Edward Sweeney
Secretary to the Board

Teresita Sulit
Recording Secretary

Tom C. Hui, S.E.,
C.B.O.
Acting Director

PUBLIC NOTICE: PUBLIC HEARING TO CONSIDER ADOPTION OF A RULE REGARDING REQUESTS FOR CONTINUANCES TO CONFORM TO SAN FRANCISCO BUILDING CODE SECTION 105A.2.6.

AT ITS REGULAR MEETING ON APRIL 17, 2013, CITY HALL ROOM 416, AT 9:00 A.M., THE ABATEMENT APPEALS BOARD WILL CONSIDER ADOPTING A RULE REGARDING REQUESTS FOR CONTINUANCES THAT CONFORMS TO SAN FRANCISCO BUILDING CODE SECTION 105A.2.6, WHICH PERMITS THE ABATEMENT APPEALS BOARD TO GRANT ONE CONTINUANCE FOR GOOD CAUSE THAT SHALL NOT EXCEED 60 DAYS.

ATTACHED TO THIS NOTICE IS A PROPOSED RULE REGARDING REQUESTS FOR CONTINUANCES OF MATTERS BEFORE THE ABATEMENT APPEALS BOARD THAT THE BOARD WILL CONSIDER AT ITS APRIL 17TH MEETING.

FOR QUESTIONS PERTAINING TO THIS ITEM, PLEASE CONTACT TERESITA SULIT, ABATEMENT APPEALS BOARD RECORDING SECRETARY AT (415) 558-6267 OR EDWARD SWEENEY, SECRETARY TO THE ABATEMENT APPEALS BOARD AT (415) 558-6142.

Teresita Sulit
Abatement Appeals Board Recording Secretary

1:30 p.m. mst
GOVERNMENT
DOCUMENTS DEPT

APR - 5 2013

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ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, April 17, 2013 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

11:20 a.m. msf

GOVERNMENT
DOCUMENTS DEPT

APR 12 2013

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on December 19, 2012 and February 20, 2013.

D. Discussion and possible action to adopt a rule regarding Requests for Continuances that conforms to San Francisco Building Code Section 105A.2.6.

E. NEW APPEALS: Order of Abatement(s).

1. CASE NO. 6775: 481 Minna Street

Owner of Record and Appellant: Nikita Holdings LLC, 579 O'Farrell Street, San Francisco, CA 94102

Agent for the Appellant: Robert Noelke, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The appellant has requested three (3) to six (6) additional months to complete the required code abatement work cited.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD

Kevin Clinch, President

Myrna Melgar, Vice President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

DEPARTMENT REPRESENTATIVES

Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6142

Sonya Harris, BIC Secretary

(415) 558-6164

Teresita Sulit, Recording Secretary

(415) 558-6267

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney

(415) 554-4634

2. CASE NO. 6776: 767 North Point Street

Owner of Record and Appellant: Charles B. Engelberg, 767 North Point Street, San Francisco, CA 94109

Owner of Record and Appellant: Charles B. Engelberg, 4 Birdie Drive, Novato, CA 94949

Attorney for the Appellant: David Edward May, 476 Jackson St., 3rd Floor, San Francisco, CA 94111-1624

ACTION REQUESTED BY APPELLANT: The appellant is requesting the Director's Order be overturned and requesting the Abatement Appeals Board's assistance in resolving the outstanding code violations.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

3. CASE NO. 6777: 1325 Portola Drive

Owner of Record and Appellant: Sofia U. New, 219 De Long Street, San Francisco, CA 94112

ACTION REQUESTED BY APPELLANT: To put the process on hold due to the suspended permit.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

p:aab\agenda\4-17-13.ts

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, April 17, 2013 at 9:10 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED June 19, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, April 17, 2013 was called to order at 9:10 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President

Myrna Melgar, Vice-President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner (Excused)

Sonya Harris, Building Inspection Commission Secretary

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D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Rosemary Bosque, Chief Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on December 19, 2012 and February 20, 2013.

President Clinch made a motion, seconded by Commissioner McCarthy, to approve the minutes of December 19, 2013 and February 20, 2013.

Commission Secretary Harris called for public comment on the minutes and there was none.
The motion carried unanimously.

- D.** Discussion and possible action to adopt the rule regarding Requests for Continuances that conforms to San Francisco Building Code Section 105A.2.6.

PUBLIC NOTICE: MEETING TO CONSIDER THE APPROVAL OF ABATEMENT APPEALS BOARD RULES REGARDING REQUESTS FOR CONTINUANCE IN ACCORDANCE WITH THE SAN FRANCISCO BUILDING CODE SECTION 105A.2.6

At its regular meeting on April 17, 2013, City Hall Room 416, at 9:00 a.m., the Abatement Appeals Board will consider approving rules regarding requests for continuance. For good cause shown, one continuance of a Hearing may be granted by the Abatement Appeals Board; such continuance shall not exceed 60 days. Attached to this notice are the proposed rules regarding Appellants requesting continuances to the Abatement Appeals Board, and the Board will consider this matter at its April 17th meeting. For questions pertaining to this item, please contact Terry Sulit, Abatement Appeals Board Recording Secretary at (415) 558-6267.

ABATEMENT APPEALS BOARD PROPOSED RULE FOR CONTINUANCES

Pursuant to San Francisco Building Code Section 105A.2.6, at the request of any party, the Abatement Appeals Board (“AAB”) may grant one continuance for good cause shown at the time of the hearing. Such continuance shall not exceed 60 days. Upon written request in advance of the Hearing date, such continuance may be granted by the AAB Secretary with the approval of the AAB President and the concurrence of all parties to the Appeals and the head of the Department which rendered the challenged decision or her/his designated representative. A request for continuance that is opposed by one of the parties to an Appeal or by the head of the Department which rendered the challenged decision may be granted only with the approval of a majority of the members of the AAB present at the public hearing on the matter. The AAB will grant a request for continuance made at the time of Hearing if there are fewer than four members of the AAB present.

Commissioner Lee wanted to discuss the proposed language to officially have the President grant the continuance instead of the Secretary. City Attorney Clark said the Board could propose and adopt different language.

Commissioner Lee said the Secretary should be in communication with the President when setting the Agenda but should the President and not the Secretary grant the continuance? Deputy City Attorney Clark recalled as written now, a request can be granted with the approval of the AAB President and logistically the request came before Secretary Sweeney and in the past when the Department had no objection, they contacted President Clinch. If he concurred and approved, Secretary Sweeney would grant the request; however, if the Department objected or President Clinch disagreed, the Appellant would have to come before the full Commission to request the continuance.

Commissioner Lee proposed that the language reflect the continuance be granted by the AAB President through the AAB Secretary. BIC Secretary Sonya Harris clarified this referred to the AAB Secretary Edward Sweeney. Ms. Clark said the Department would concur on a request with the approval from President Clinch and followed by AAB Secretary Sweeney to inform the

party their continuance was approved. President Clinch asked if he agreed with that proposed language. Commissioner Lee made a motion to change the proposed language and Secretary Harris said the motion would be to adopt the rule regarding the request for continuances that conform to Building Code Section 105A.2.6.

Commissioner Lee agreed with the language “pursuant to Building Code Section 105A.2.6, at the request of any party, the Abatement Appeals Board may grant one continuance for good cause shown at the time of the Hearing and such continuance shall not exceed 60 days.” He proposed to change the following sentence: “Upon written request in advance of the Hearing, such continuance may be granted by the AAB President through the AAB Secretary and the concurrence of all parties to the POs and the Head of the Department which rendered the challenged decision or his/her designated representative a request for a continuance that was opposed by one of the parties to an appeal or by the Head of the Department which rendered the challenged decisions may be granted only with the approval of the majority of the members of the AAB present at the public hearing on the matter.” The second half meant that if one of the parties disagreed with the continuance it would come before the full Board.

Deputy City Attorney Clark believed it would continue to operate in the same way except she wanted to ensure the party would not contact the President directly without the benefit of working through Secretary Sweeney for the request and for him to contact President Clinch. If President Clinch and the parties concurred, Secretary Sweeney could grant the continuance which may be better logistically. Vice President Melgar said actually it protected President Clinch when going through the Secretary first and with the full approval from the President who had full control but the staff could conduct the administrative work.

Deputy City Attorney Clark said the change was basically how the Board had operated and the only change from past practice was to ensure that the rule conforms with the Building Code in that only one continuance for good cause can be granted and cannot exceed 60 days. President Clinch asked if it was better clarity the way it was currently written or Commissioner Lee’s proposal? Commissioner Lee decided to leave it to the Board’s decision and President Clinch thought it read fine and made a motion to approve it as is.

There was no public comment.

President Clinch made a motion, seconded by Vice President Melgar, to approve the language of Building Code Section 105A.2.6 as it was written.

Commissioner Mar said he had no problem with what was written but in terms of proper notice on the request, if the person asked for a continuance and the Board was not given sufficient notice then they should consider a requirement on the notice section. When it was on the Agenda without sufficient notice to interested parties or neighbors that a continuance was granted, there would be no opportunity for them to attend and he would not mind granting the continuance if there was a responsibility to post the notice to notify the interested parties for the revised Agenda to allow their presence and testimony. President Clinch believed they should not grant the continuance once an item was placed on the Agenda and Commissioner Mar agreed.

Ms. Clark discussed the rule's flexibility and if it came in at the 11th hour and was communicated to President Clinch, presumably the reasons would also come. If it was because of a major medical emergency excuse they could not attend it can be communicated.

Ms. Clark said at that point, it was up to President Clinch but in practice the Board could consider the reasons in particular with respect to the 11th hour request and she would be hesitant to set a rule that disallows flexibility. In practice, keep in mind that it would be difficult for someone to take advantage of the system and the rule allowed for flexibility. If there were invalid last minute emergencies the Department would ultimately object with the President's disapproval.

Rosemary Bosque, Chief Housing Inspector, believed it would be resolved if it was on the Agenda, a Director's Hearing posted and a request for continuance was granted to immediately take their testimony especially when there was insufficient notice given for the opportunity to return. Commissioner Mar agreed.

Commission Secretary Harris called for a roll call vote.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried unanimously.

E. NEW APPEALS: Order of Abatement(s)

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal, discussion and public comment.

1. CASE NO. 6775: 481 Minna Street

Owner of Record and Appellant: Nikita Holdings LLC, 579 O'Farrell Street, San Francisco, CA 94102

Agent for the Appellant: Robert Noelke, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The Appellant has requested three (3) to six (6) additional months to complete the required code abatement work cited.

NOTICE OF DECISION: At that time, the AAB voted to continue the matter to the next hearing date, which was scheduled and continued on **May 15, 2013** at 9:00 a.m., City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416.

Rosemary Bosque, Chief Housing Inspector, said this was the Auburn Hotel which had a long history of not being properly operated as far as the maintenance of the building was concerned. Unfortunately, it was a revolving door of violations somewhat similar to the Grand Southern Hotel where they filed a lawsuit to enforce the owner and the owner's agent to properly run the hotel. The good news was there were several active building permits and other permits for work at this property and her colleague, Mr. Noelke, will speak very eloquently about that but the concern was that this large hotel had 78 guest rooms with 29 tourist and 49 residential rooms and about 20-30 occupants in this building which was the size of a large apartment building or a mid-size residential hotel.

Inspector Bosque said the problem was they had been at this for awhile. They started renovations without the proper containment for lead and had an issue of asbestos cited by the Health Department. They currently added about 9 months on renovations of the building yet when the Housing Inspector was recently at the site from mid to late February, some of those rooms were unfinished to allow the residents who lived in dilapidated conditions and the other rooms to relocate into those rooms. She gave a brief history with deep concern for staff and recommended this request should be denied and asked for referral to the City Attorney's Office because of the revolving continuous nature of these Violations.

There were several Notices of Violation which taken the issue one step further of operating this hotel which was not a good way to do business. They did a room to room inspection of this building in September of 2010 and that particular Notice of Violations was posted in July of 2011. In April of 2012, about 9 or 10 months later, they went back to the hotel for another room to room City Attorney requested Task Force inspection which resulted in a 15-page Notice of Violations in May of 2012. Generally on a room to room inspection, it delivered a message to the property owner that they needed special compliance for the operations of the hotel but the property owner or the operator failed to get that message.

Inspector Bosque said staff was aware that they have changed operators and it had been awhile. About 10-12 months later, they realized the operator made no improvements and they were very concerned about the changes and conditions of the tenants. From that standpoint, they strongly recommended the request for additional time should not be given and an Order of Abatement be issued on the property to encourage them to move forward but the improvements needed to happen for the operation of the building on a daily basis.

Chief Inspector Bosque presented some photos of conditions of painted over sprinkler heads that had been there for awhile and while this particular room was renovated, not all the rooms have been. In the last year or so, no tenants were relocated to any of the renovated rooms where renovations had occurred and the last inspector was at the site on February of 2012 can testify. Some of the renovated rooms were unfinished and needed substantial progress in the right areas and they were concerned that not a flurry of activities where it was not addressed on the living conditions of the tenants in the building.

Richard Stratton, Attorney for the Appellant, Nikita Holdings LLC, said Chief Inspector Bosque reiterated the fact that this building had a very bad history and presented a very quick overview of the context of the work that was done and introduced the contractor regarding his progress as

well as the owner's agent, Robert Noelke. The brief history of this building began when it was under a 20-year lease with a prior operator that ended in January of 2012 and it was a mess. About a year ago, the Task Force Inspection documented the conditions in which was left by the previous operator who at the end of his lease chose not to make any upgrades of any kind whatsoever.

Mr. Stratton said when the owners took possession a year ago in January, Mr. Vishnu Shah was the new lessee and was present at this Hearing, as well as two representatives of the owner and the owner's consultant, Mr. Noelke. The new work commenced last year but after the Task Force's inspection, it was concluded there were too many issues and not feasible to renovate each room but apparently required total renovation. While it was underway, one-third was done and about a third of the \$600,000 cost was spent and that was why the Appellant was here to request more time.

Mr. Stratton said essentially he had much of the documentation before the Board as was part of the old bad news and showed a simple graphic chart with green color that showed completion and the red color showed work to be done. He pointed out that there were numerous categories that went far beyond the scope of the original and this chart was very detailed. He could not go into details but simply wanted to note as far as the tenants, they had a 4-phase process underway with 24 occupied rooms and the rest were vacant. They will be moved to the completed rooms which should be absolutely final and completed within the next two months. He introduced the contractor, Larry Wong, WNGS Construction, to briefly comment on what was done, and why they needed more time.

Larry Wong, General Contractor of WNGS Construction, said the work began in August of 2012 primarily for the electrical portion of these violations. There was about one month of progressive work before they were ordered to stop and it took about 3 months for the inspection of the lead abatement inspection, abating and testing results. They immediately continued work after the test results which they found the lead was insufficient to harm anyone. In December of 2012, the owner gave him a thick packet of violations and asked for his opinion. The building was occupied by not so ideal tenants who urinated on the walls, and defecated in the sink. The drawings were all over the walls and by repairing these items, the odors and stains would reveal themselves in about two years. He recommended replacement over repairing these items which would be guaranteed for at least 20 years.

The owner agreed and on December, 2012 he obtained the permits for the remainder of the renovations. The permit was to comply with all the Notices of Violation in his violation packet and he had records on the permits that all the violations will be completed. During the past months, they realized that it was more than just replacing a fixture and a sink because they removed the walls to change the drainage system or water lines and it apparently took more time. For the past 4 months, he estimated the electrical work and window installations were about 45 percent done of the building and not the violations, about 25 percent of the plumbing work and only 10 percent of the building work was done. The reason for this was the building work actually occurred at the end of the project where finishes were installed and currently about 30 percent to completion. He disclosed their progress and estimated about a year to complete and there were volumes of work to be done. About two weeks ago a female Electrical Inspector

visited the site and found there were no issues, but they worked together with the inspectors in compliance with all their comments.

Robert Noelke, Appellant's Agent, said in the last few months, Inspector Steve Hajnal went numerous times to the site as well. On this property there are Notices of Violation of 93 separate items, some in the public areas and some in the rooms. The public area items were generally cleared and taken care of but they were stop gap or temporary solutions and anticipated it would be redone again once they completed the work through this process.

Presently there were four active building permits that worked under two electrical permits and one plumbing permit. They had a pest control service, a licensed contractor, engineers and an asbestos lead contractor, RGA, new base board heaters ordered for every room for a cost of \$14,500 and new windows that were installed which was not part of the Notice. When they patched these windows and changed the sash cord, it was apparent it did not work so they installed new windows. As the project became bigger, they had to decide if they needed to fix these rooms or comply further with the Notice which took several months. The work was delayed for 3 months and all work was ceased because of the asbestos and lead complaints which were bogus because the only issue was the lead containment and the workmanship but it was all cleared.

They had a new operator in the hotel and in many cases some of these hotels were run down because the operator failed to upkeep the daily maintenances. They have expended on permit fees that exceeded well over \$15,000 and a new water service with the PUC fees of \$8,125 because they needed more pressure. In order to redo the plumbing, they needed more water service and upgraded the bathrooms that were not part of this Notice but provided more bathrooms and remove some of the tourist rooms to provide bathrooms, etc. With these active permits, the point was they operated in goodwill and the time requirement of at least 6 months would require at least a year to finish the project. There were many projects in this building and simply requested that would be one thing if nothing were done and no permits but they moved ahead as quickly as possible and there were back steps in this process.

President Clinch asked for the Department's rebuttal.

Chief Inspector Bosque said Mr. Noelke commented that the containment issue was not a big deal. They started the work while tenants were still living in this building with improper containment and disturbance of lead paint that they were supposed to do and it was not bogus. It affected the tenants living in the building to deal with the issues of having it migrated all over because the work was not started properly. She was concerned and would not deny the fact that there was a lot of ongoing activity but it did not address the living conditions of the people that occupied the building.

There was testimony that the property owner no longer employed the bad operator. If every property owner hid behind a lessee, whether it was a long or short time lessee, they would never get compliance in residential hotels that had lessees. The issue was the property owner should have known because of the Notices of Violation that went to them and what went on in this building and perhaps that should have happened before it did. Their job was to deal with the

minimum standards set by the Housing Code as far as what had not happened in that building for the people residing there and the conditions were bad.

They heard through testimonies that it took time but how much time was needed to renovate rooms on a program basis to move people into the renovated rooms? They were unable to see that not one of those was completed. She did not know what the schedule was but it was certainly not done in a way to address the concerns and the living conditions of the people in the building and that was why staff believed that an Order of Abatement was a fair and prudent action to take to encourage the property owner to continue what they needed to do in this building.

Commissioner McCarthy asked when was the last time the Housing Inspector was on the job site? Chief Inspector Bosque said their last inspection regarding the Task Force Inspection was in mid to late February. They had other open cases where they had inspectors at the site because there were other Notices of Violation that did not have the correct number of bathrooms, etc. On this particular case, February was the last inspection because it was scheduled through the City Attorney.

President Clinch asked for Appellant's rebuttal.

Robert Noelke, Appellant's Agent, said there was a complaint on the lead which was abated and that was why they hired RGA, a lead asbestos contractor and it showed they took care of the job and were proactive. The relocation process on the 24 occupied rooms will take about 4-6 weeks to transfer them from those rooms to new rooms. The Order of Abatement would not serve any purpose except to cloud the title and made it very difficult to obtain a loan when funds were needed to improve the building. They would be happy to work with Chief Inspector Bosque and other Housing inspectors with periodic inspections but they needed more time and it made sense, particularly the fact that they had these active permits.

Commissioner Mar asked if there was a deadline with plans to transfer some of these occupants and because the hotel was partially SRO residential and tourist, how many tourist rooms were renovated? He was concerned that the owner worked only on the tourist side and rented the tourist rooms but had not dealt with the SRO residential which seemed as a financial disincentive to move quickly on the SRO residential.

Attorney Richard Stratton said that was not the case. The entire building was being done in a methodical way and there was no favoring of tourist rooms over residential rooms. The key point was that they were very close to finish completely with rooms where the existing tenants can move into good, clean and brand new rooms with new sinks and everything new and the best estimate from the contractors was about two months.

Many of the problems for the occupied rooms would not interfere specifically with their daily lives. For example, the doors were damaged and the door frames were not good but the door frames will all be replaced after all the rooms were done. The doors, sinks and the plumbing were all functional except everything would be upgraded. It would be useful if the Board would have the ability to defer another few months to review the tenants' progress after they moved in

and it would be useful for the Department to have another inspection and offered them a tour. When looking back, it was a depressing thought but in looking forward, they needed the entire building renovated and completed in order for the entire building to be operated the way the hotel should be operated.

Commissioner Lee wanted more information about their current plans for the renovated rooms, the management and the protection from the construction for the current tenants?

Kong K. Chiu, aka K. K. Chiu, Structural Engineer, said this building was owned by the Patel brothers' father as a first building in the city so the Patel brothers kept the building and there was a 20-year lease that ended beginning last year. At about the same time their father passed away, the brothers took over and the building was in a mess. The Patel brothers decided on total renovation instead of fixing it, which the Department cited, and replaced with new electrical, plumbing, removed and replaced with new sheet rock, new windows, new door frames instead of patched work and a new floor. When it was finished, the building would be renovated.

He advised them to separate the projects into four phases instead of running around to complete the entire building. The first phase was to take care of the existing tenants and also recently installed the carbon monoxide detectors. He proposed the first phase to finish some rooms to relocate the tenants and once they occupied the rooms it would be a new unit which would take about 8 weeks. A second group of 20-25 rooms will at least have a bench mark to check and inspect one group at a time and another 4 months for another group to work on new bathrooms, etc., for completion.

Commissioner Lee wanted more details on the current progress since people were moved from room to room as they were finished, and Commissioner Mar said regardless if they were tourist or SRO rooms he wanted to know the current status of the 78 guest rooms which none were ready.

Larry Wong, contractor, said none of the rooms were currently 100 percent ready and about 30 rooms were almost 80 percent finalized and within two months they can finalized the 30 rooms and moved the 24 over to those rooms. Were they just doing the tourist rooms? There was no designation in which rooms were tourist and they only fixed these rooms so these tenants can shift over. Commissioner Lee clarified that there were 24 occupied rooms and they tried to fix the 30 rooms that were 80% completed and verified by Mr. Wong.

Vice President Melgar asked if his plan was for everybody to relocate once all the 24 rooms were ready? Mr. Wong said once one or two were finalized and signed by the inspectors they can immediately shift people over to finish out. The way these rooms were set up was the plumbing lines ran vertical, setting up for 6 rooms, 2 per floor. They tried to finish at least 4 of those rooms so when the people were shifted over they can finish the whole section. At this time, there was no one to deal with the tenants on the logistics of moving the tenants when the blocks of rooms were ready and Mr. Noelke said the operator will work with the tenants on this. Vice President Melgar asked if the operator was totally cognizant of the construction? Mr. Noelke said he was there every day with the tenants on this.

Vice President Melgar said it was commented that maybe they can move people as they went along. Was there an actual plan for blocks of rooms that will be finished and specific tenants to move into those rooms and was there prioritization for certain tenants such as an elderly and a plan? Mr. Wong said their plan was, because these rooms were so scattered in a way that they cannot only take out an entire block of the section, they were going to move strategically where they were able to renovate more rooms rather than only specific. Vice President Melgar said on an occupied building, the tenants' needs may be different as a contractor needed to maximize their schedule. She was unclear about it and asked if the lessee or their representative can respond regarding where was that plan and how it fitted into their plan?

Attorney Stratton, Appellant's lawyer, said Mr. Vishnu Shah, the lessee, may answer that. Mr. Vishnu Shah said they worked on schedule and showed them the inspectors' signatures from Plumbing, Building and Electrical Inspectors. Vice President Melgar said she did not ask about the violations but what his plans were to move the tenants to the newly renovated rooms as they became available and his coordination with the contractor to ensure the needs were met besides the construction schedule. Mr. Shah said he posted one sign on the parking area and were 90% finished. If they completed 90% on one side of the rooms, the new tenants would be assigned for Rooms 101, 109 and 111. The doors and the new rooms on the left side for 21 tenants was 90% ready and possibly done. It was different now and he wanted to make sure on the one area it was easy to fix and gave the plans to the contractor.

Attorney Stratton said it should be noted that Mr. Shah lived in a manager's unit and a part of the hotel. There was no incentive on anyone's part to slow down the process of completion. It was their hope to complete from 80 percent to a 100 percent as soon as possible and they have to be signed off by the appropriate City departments. Given the levels of work at these jobs, it will take some time which was why two months were realistic and a conservative effort and everyone will benefit if it was done earlier.

Commissioner McCarthy asked what was the project contract estimate and approximate timeframe for completion? Attorney Stratton said it was clear that when this application was made 3-6 months, the focus was more on the existing 24 tenants. On the scope of the entire project which was done, the best estimate was about a year and would refer to the contractor, Mr. Wong, but with respect to all features of the building it could possibly finished by the end of the year or early part of next year.

Commissioner McCarthy heard a figure of \$600,000? Attorney Stratton said the dollar amount was over \$600,000 and more than \$200,000 was spent with more spent every day. Robert Noelke, Agent for Appellant, said the hotel on the last 24 rooms were not rented and was off the market. Also, there were different phases of the project and anticipated relocating at least 21 tenants which may take about 4-6 weeks. They anticipated several months to renovate the other rooms and updated the bathrooms before final inspection from the Housing Inspectors. Realistically, it may be as much as a year needed to complete this project.

Commissioner Mar said he was unsure about the two months timeframe because if many of the rough plumbing and electrical work were done, these SRO hotel rooms should not take two months to finish a block of rooms unless it was done one at a time and there was not that much

area to do. Mr. Noelke said it took slightly more time with the installation of the appliances which was new baseboard heaters, new sinks, floorings, etc. They worked flat out and anticipated some rooms before that and rented them soon but they have to wait for the required sign off and many unfinished work to do. Commissioner Mar said there were no new residential tenants and Mr. Noelke said there were no rooms rented to tourist.

President Clinch believed there was a lot of ongoing work and many inspections from the Plumbing and Electrical Inspectors. He made a motion to grant an extension to allow the work to continue and will not uphold the abatement and was opened to other opinions.

Commissioner McCarthy said there were boxes that needed to be taken off when making decisions based on the testimony it was taken off and it was not perfect. He was unsure if the Department was involved since February but there were recent contacts with the Building Inspectors which was not their concern. If there were permits pulled, they should have more recent inspection. The timeframe fell apart when dealing with the abatement and not much work were done and tried to mitigate what went on, possibly on February and March. He was happy with the fact that the dollar amounts previously discussed was invested into the hotel. Mindful of the fact, if that kind of money was spent in the hotel, they should support this project and not necessarily holding it back at this stage.

He was concerned, as well as other Commissioners, on the timeframes and as someone from the construction industry, he was familiar with the difficulty to work around people and it can be fast or very slow. Based on the tenants' testimony, he would prefer the timeframes be better. It was good to hear from the operator that three tenants had moved into their new rooms and wanted that verified by the Department and these were signs that showed good faith efforts were done.

In regards to the management and management's company that was fired, that was the message he wanted to hear. He understood that contracts were complicated and difficult to change within but the Commission did not hid behind contracts or penalized people who were before them. Although it was bad management, they passed down the necessary sentence that should be imposed on those buildings and if he rehired the same contractor, his concern would not change. In regards to the testimony, he concurred with President Clinch to continue this and maybe at some point if someone wanted to articulate a timeframe to return with an update.

Vice President Melgar said she was not as convinced as other Commissioners, with all due respect, \$600,000 spent for a 78-unit building with two-third rented to tourists and the possibility to maximize the investment did not seemed very expensive. If their tenants were happy, they would not be here today and a lot of the complaints to the Building Inspection were complaint driven. She believed something had not worked on their planning since their new lessee took over and prior to that it was still their holding to maximize their investment and needed to put some resources into their building. She would not open to grant a continuance and it would not preclude them from continue finishing the work but to prioritize the needs of their tenants before but maximizing their investment with the hopes of renting the tourist rooms at some point and it would add pressure.

Commissioner Lee had a different opinion and wanted to grant a continuance to allow them at least to hear what the project plans were for the tenants and maybe enforced them to move ahead with that plan to make sure the tenants were protected and relocated to the rooms as soon as possible. He was willing to grant the continuance for a month and have their inspectors monitor what was completed or not, what were the plans for the existing tenants and if they have the new rooms or were they ready to move in the new rooms and what were those plans before he decided on whether or not to uphold the abatement.

President Clinch wanted to hear testimony from the Building or Electrical Inspectors who were at the site and possibly more witnesses would come forward. Commissioner Mar said he was more concerned with the timeframe. If they were to grant a continuance, he agreed with Commissioner Lee about making it 30 days and if they can relocate the 24 tenants in a month and discussed about the other issues which should be the priority. There were many empty rooms and in one month they can make it ready for the 24 tenants and later return to discuss about the rest of the building.

President Clinch asked for any public comment?

Pratibha Tekkey, Central City SRO Collaborative, as the Community Organizer and part of the Housing Clinic, said that she was here before and had many private outreach on SRO hotels. They had been to the Auburn hotel many times over several years and as Chief Inspector Bosque pointed out, they had a very bad history of maintenance problems and difficulties reaching tenants there because many of them were transients and were afraid.

They heard about today's Abatement Hearing and went yesterday but they also did part of collaborative, outreach and private SRO for the lifeline phones. She met with the lessee, Mr. Shah and asked for permission to communicate with the tenants regarding lifeline. He informed them there were only 7 tenants living there and most of them worked so she will not be able to talk to them. In December, 2012, she was informed to contact one of her client in the building to do an outreach. She observed many rooms were boarded up and the conditions were badly maintained and agreed with Chief Inspector Bosque that they should not be allow a continuance. This hotel had a history of incompliance with their requests and was concerned about the tenants' rights and their weak plans.

When tenants moved from one unit into another regardless of the same building, they lose their tenant's rights and can be easily evicted. They had limited access because the owners can refused them and they would not know about this if tenants were afraid and not coming to them. They were not allowed access to the building to witness it and been in this building many times and not seen any diligent effort. Although Mr. Shah was a new lessee, the owner did nothing. Henry Karnilowicz said that he worked with the clients and the owners on many of these residential hotels that were difficult to work with but they had to provide housing. He tried to manage the hotels himself one time and he went fix one of the bathrooms, one of the tenants went to the bathroom and defecated and spread all over the walls and went to his room laughing. There was also a situation where a tenant had a microwave in his room with a pot of maggots inside and it often took more time and complicated to work around these people. There was a lack of maintenance for several years and needed at least 30 days to work on it and not only

plastering. He worked in many of these hotels and knew exactly what went on including one operated by the Tenderloin Housing. The tourists did not want to stay in these places and he urged the Board to continue the case.

Commissioner McCarthy thanked the Tenderloin Housing Clinic for their testimony. He heard their situations and knew of their bad history which was pretty much the outlook into their future will be and as a Commissioner, they were very cognizant of that. From his point of view, he was unsure if the Board would like to continue this; but if they were, they would be able to come back and report to them if the property owner would facilitate the Tenderloin Housing Clinic a site visit to demonstrate the work that went on and make their good judgment there. He wanted to hear from them if they will concur or not which would be very helpful to them and a good compromise if both the owner and the collaborative agreed to do that.

Both Ms. Tekkey and Mr. Noelke agreed to do that and Commissioner McCarthy said that would be stated for the record. Commissioner Mar said if it was continued, he wanted the Housing Inspectors to at least visit the 24 rooms that were occupied and to confirm the occupancy.

President Clinch made a motion, seconded by Commissioner McCarthy, to grant a continuance for one month and have all parties return for an update.

Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>No</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>No</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried 4-2.

City Attorney Clark clarified if it was continued for 30 days or one month because it may make a difference. They could continue to the next scheduled meeting of May 15th and sometimes it moved to two months but she heard it was for a month.

2. CASE NO. 6776: 767 North Point Street

Owner of Record and Appellant: Charles B. Engelberg, 767 North Point Street, San Francisco, CA 94109 and 4 Birdie Drive, Novato, CA 94949

Attorney for the Appellant: David Edward May, 476 Jackson Street, 3rd Floor, San Francisco, CA 94111-1624

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the Director's Order be overturned and requesting the Abatement Appeals Board's assistance in resolving the outstanding code violations.

NOTICE OF DECISION: The AAB voted to continue the matter to the next hearing date of **May 15, 2013** at 9:00 a.m., City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416.

President Clinch said the Department would speak first followed by the Appellant.

Chief Housing Inspector Bosque said this was a single family dwelling and staff wrote a typical Notice of Violation regarding the paint. The Complainant came in on the adjacent property owner and they tried to work with both the property owner, Appellant and the Complainant. From the staff report submittal, there was a history between these two parties. They did not send an immediate notice and tried to work with the parties for two or three months. The Notice of Violation was written in July and did not went to a first Director's Hearing until the following October. The Hearing Officer then granted a 30-day continuance on November, 2012 and there was an advisement and the parties could not agree to make the appropriate repairs. An Order was issued and they were here before the Board with appealed of that Order.

There was some confusion on the part of the complainant regarding the difference between the disturbance of lead paint and the presumption there was lead paint at the subject property because of when it was constructed. The lead abatement was the actual removal of lead base paint which was not what their notice asked for. When dealing with the disturbance of lead base paint, it must be done properly with proper containment using certain tools, vacuuming any paint chips with hepa filter. To orientate the Board, she showed a photograph of the building. On the adjacent property on the North Point, she showed from the rear of both structures an aerial photograph. The area in question was at the rear of the lot and the area cited for peeling paint. This was one of many cases they had when there were no compliance for many months and they forwarded it to an Administrative Hearing as their policy required. When they work on old cases, they made sure they process them through the administrative process and the Board may want to hear from both the Appellant and the Complainant.

Vice President Melgar said she had trouble envisioning this after reading all the various ongoing emails and asked to return to that picture of the wall and wanted to know if the complainant, Ms. Tsang, owned that wall. Chief Inspector Bosque said the wall belonged to the Appellant which the property was cited and she showed the property location of the wall. The complaint was in the adjacent structure that showed the rear and the wall was essentially toward the rear of the property. Vice President Melgar asked on the removal of the trellises on the wall, what were they on? Chief Inspector Bosque clarified it was on the wall of the subject property and the Complainant and Appellant can talk more about that. She left the picture on the projector as they may need it later for discussion purposes.

David May, Attorney represented Dr. Charles Engelberg, property owner, and wanted to orientate the Board of the importance to actually view the walls and the trellises they talked about. He showed a picture that indicated the wall, a light well was on the complainant's property, Ellen Sang and the trellises covered the wall and prevented access to that portion of the wall. In fact there was no access to the wall except either in the airspace or on the ground of Ms. Tsang's property. He showed another picture taken by the Department that was in the Board's packet and the Department's report.

The picture showed the length of the light well and in fact, this was part of the entrance to Ms. Tsang's property on the 769 North Point of the adjoining property. The only way Dr. Engelberg or anyone property owner can paint this wall was by trespassing into Ms. Tsang's property and the problem was prior to the issued Notice of Violation and before there were complaints on this. Dr. Engelberg, the predecessor owner of this property, tried to paint this wall and they did not have it now but will know what wall to discuss. The property owner at 767 North Point Street, whether it was Dr. Engelberg, since 1997 or prior to that wanted to paint this wall because they wanted to maintain this very nice property.

Dr. Engelberg and the prior owner did an extensive renovation of this property and the only portion of the property that was not addressed by the renovation was the wall and it had not been addressed either following or prior to the Notice of Violation because Ms. Tsang, complainant, refused to allow anyone to do it. On Exhibit 1 of their reply papers, it was the most recent letter from Ms. Tsang dated April 8, 2013 and she sent a number of these letters almost verbatim the same letter at different times. It was a cease and desist request and it charged Dr. Engelberg and his contractors with trespassing onto her property and she demanded they cease and desist. This was trespassing when they looked over the subject property wall in order to plan to paint it. There was no survey to indicate the exact property line and if a head was visible over the property line or next to the property line, she claimed trespass and demanded they cease and desist.

She contacted the police when there was physical presence from Dr. Engelberg or his contractor on her side of the fence. What they talked about which was something not read in their staff report, not addressed at the Director's Hearing and will not be heard if they read back the transcript of the Department's presentation a few minutes ago. There was no recognition on the part of the Department that Dr. Engelberg wanted to paint this wall, but cannot either physically or legally because the complainant prevented him from doing so.

The Board needed to address this issue and aware of the fact there were laws on this particular issue as pointed out in the reply statement. The law never required impossibilities as quoted from the Civil Code Section 3531 that "no man is responsible for that which no man can control, Civil Code Section 3526, and no one can take advantage of his own wrong" or in this case her own wrong, Civil Code Section 3517. This was the law of the State of California and the Department ignored it and this Board did not have that luxury.

President Clinch said before they go into the Department rebuttal, he wanted to focus on the paint chips that landed on the adjacent property which related to the violation. Attorney May said as a matter of fact the Department made it clear that this was not what this was about and the condition was on Dr. Engelberg's property and it was the wall but President Clinch said that was not what they were supposed to hear. Attorney May said this was the Department's Report as specifically stated and if the Board reviewed the Department's report, it was reiterated or emphasized by the Department representative a few moments ago.

On the Department's report, Page 2, the first paragraph stated it was not about the lead abatement and lead chips but about painting over the wall on Dr. Engelberg's property. If they talked about the removal of paint chips from Ms. Tsang's property, Dr. Engelberg cannot do this unless she

allowed him onto her property. As a practical matter, the paint chips on her property can be swept up with a broom and it was not about a significant or substantial amount of paint chips on her property from his wall. Ms. Tsang's wall had also peeled, her walls painted and it was also built before 1978. There was no discussion of any separation of which paint chips and from whose wall it came from. Commission Secretary Harris interrupted and said they will discuss further on that later but Chief Inspector Bosque will now speak.

Chief Inspector Bosque said the Notice of Violation was issued on July 27, 2012 spoke for itself but it had a reference to paint chips and the reason was when the peeling paint needed to be repaired on the side of the subject building, it needed to be done in a safe manner. The note was there because the inspector observed the peeling paint appeared to have migrated onto that property. Anytime they required the peeling paint be done, they added and it was incorrect from the statement mentioned earlier that this was not about the lead hazard from the standpoint of when they required lead paint disturbed by repairing peeling paint on the side of a building, they asked that it be done pursuant to the Building Code Section and this was what it talked about. As far as the statement of the law that was given to him, it was not the Department or the City's position. Obviously there were disputes between these different property owners but for them a typical Notice of Violation asked that the peeling paint be addressed and done in a lead base paint practice manner.

Vice President Melgar said all Dr. Engelberg had to do was clean up the chips on his neighbor's property. Chief Inspector Bosque said it appeared to the inspector at the time the issued Notice of Violation had migrated from the peeling paint from the side of the wall. Vice President Melgar asked did they know it was because of unsafe practices or was it was a natural thing? Chief Inspector Bosque said they had not observed at any time any work was done to the property in that there was no proper containment and observed over period of time there were deteriorations and if the work were to begin, it would require proper containment. Vice President Melgar asked if there was peeling paint on the other side of Ms. Tsang's property? Chief Inspector Bosque said she was not aware if there was or not and it was not the subject at that time and what the inspector saw was the wall that was at issue before the Board.

Commissioner Mar asked if there were other Notices of Violation on Dr. Engelberg's property? It was still a catch 22 because if the paint chips had fallen naturally because of ill repair, the property owner cannot repair it and it will be a never-ending process. He should clean that up but will ultimately need to go onto the neighbor's property to do so but he cannot resolve the structural problem which was to take off the old paint and put on the new paint and wondered if it was addressed?

Chief Inspector Bosque said from the staff's standpoint, whether he can get onto the property or not, they were not the Trier of fact for that and they did not have expertise to know whether that was the case or not. Although they realized there was a history between these two property owners and that was why they attempted to give them some additional time to try to work this out. Unfortunately, when they noticed the peeling paint in situation like this, they were compelled to write the Notice of Violation and tried to give them additional time.

Typically when they write a Notice like this and someone needed access to an adjacent property, they can work out a way in which the work can be done. Unfortunately there were a lot of

properties with zero lot lines in this city and usually reciprocal easement agreements and the work got done. This was one of those situations where there was a dispute but when they wrote the Notice of Violation they were not in the position to determine that was the case or not but they still had to write the Notice of Violation and whether it was factual or not that he cannot access the property she would not know and cannot make that decision legally.

Commissioner McCarthy said it seemed like they were damned if they did or damned if they did not. The question was recognizing with testimony and letters in their package stating that they had best intentions to do the right thing to clean up this but they cannot. Should the Department's position recognized that and was the Appellant here today? Chief Inspector Bosque said from the Department's standpoint as she had made her comments originally, there was evidence in the package that stated that and they will not restate the position of either party. Had there not been that information, they would perhaps comment and provided some information for him and it would be second hand information from their standpoint so he had the position of both parties.

Commissioner McCarthy said if he was on the job site with a violation of that permit and an inspection asked to correct that, he had the option to correct and make it right for the violation. With that in mind, would it not be who the Department to ask the hard question why this lady resisted on her property to correct the violation. Chief Inspector Bosque said she had information to provide him that she was reasonable as well. Commissioner McCarthy asked if the complainant was here today? Chief Inspector Bosque said she was here and they needed to hear from her because from that standpoint they cannot make that determination. She gave them documents where she believed the property owners that had been cited had acted unreasonably and they cannot determine who had not acted unreasonably. Although she made sure they had all the information in front of them and perhaps needed to hear from her as well.

Commissioner Mar asked if there were other problems besides the wall? Chief Inspector Bosque said there was no other violation except this particular one and the reason they extended 3-4 months was they anticipated there would be an agreement and they tried to facilitate these but in this situation both would not agreed. Commissioner McCarthy asked if it was her testimony that there were other problems with the neighbors? Chief Inspector Bosque said his question was if there were any open cases and there were none.

Commissioner McCarthy said when there was previous remodeling and improvements done to the property, there was no issue there? Chief Inspector Bosque did not have that information as far as building activity on the property but dealt with her complaint regarding the peeling paint. Commissioner McCarthy said there was no issue prior issue brought to her attention with these neighbors other than the standing issue before the Board today. Vice President Melgar asked if she noticed there were children under age 6 living in Ms. Tsang's property or visited? Chief Inspector Bosque said she and her inspector had not observed that or had that information and there may be some recent developments.

President Clinch asked to hear from the complainant and City Attorney Clark said the complainant was not a party but she can speak on the public comment. President Clinch said they may not be ready for public comment and asked for Appellant's rebuttal.

Attorney May said the Department had just admitted they ignored the Appellant in the room which was Dr. Engelberg's inability to comply with the Notice and it was not for lack of desire but because he was legally and physically prevented from doing so including by the Police Department. For the Department to suggest they did not know this was a property line issue and the access was only from Ms. Tsang's property was disingenuous and unbelievable. The Department had known this and it was obvious from the photograph that anyone who was there can see the only access to this wall was from Ms. Tsang's property.

You did not have to be a legal genius to go onto someone's property without their permission was trespassing. If the Department had legal questions about this issue which suggested they did was unbelievable, since they can refer legal questions to their City Attorney's Office. There were literally more than a hundred attorneys in the City Attorney's Office and one Deputy City Attorney present today. The Department can request legal advice in situations such as this with no problem at all. He can speak to that himself because he was a Deputy City Attorney in the Code Enforcement Division and personally dealt with these sort of issues when he served with the City and to suggest that the Department had no way of ascertaining what the legal situation here was ridiculous.

Commissioner McCarthy asked did he understand the seriousness of the lead abatement they had to do and required certain procedures to process? Attorney May said he understood that and he had his EPA certified contractor, Phillip Lubin, present today to respond to that. They were fully aware of what was required with respect to remediating lead paint issues and had done this 100% and it had been the case for 15 years. Commissioner McCarthy said what was in front of the Board today, they wanted to get to the bottom of this and they respected that there was obviously some bad tension on this but they needed to focus on a solution.

Attorney May suggested the solution would be the Department to cite Ms. Tsang also for the violation and to enforce the violation against her as well so the Department, if necessary, go onto the property with the powers granted to it by the Administrative Code and to get this problem remediated. Dr. Engelberg agreed to pay any and all reasonable expenses which were not the issue. As far as being reasonable, the most recent attempt to resolve this issue outside of the compulsion of the government was contained in Exhibits 2, 3 and 4 of their reply.

A fellow named Joe Butler, who represented Ms. Tsang, contacted and emailed him a couple of weeks ago and will help to informally to resolve this issue. In order to resolve this issue, there were email interchanges with copies to inspectors. Ms. Tsang as well as him and he also copy people in his responses. They were to resolve this issue by these email interchanges and anticipated resolving before this Hearing. When it was clear that he was reasonable and chances they will resolve this matter before today, Ms. Tsang disavowed any connection with him and rejected all of his efforts.

Commissioner Lee asked when Dr. Engelberg purchased the property? Attorney May said he purchased the property in 1997 and there was an ongoing dispute at that time with the previous owner who tried to paint that particular wall and Ms. Tsang resisted. It was a fact that the previous owner was involved in a lawsuit which resulted in a judgment of six figures against Ms. Tsang. Dr. Engelberg, Appellant, wanted to clarify that the previous owner was sued by Ms.

Tsang and he was named the co-defendant and because of the interference she painted that side and hosed off the paint on the side of the wall they tried to put on. She had a judgment of \$141,000 against her in a jury trial which subsequently reduced to \$101,000 which may explained some of her bitterness to allow the access and at one point she offered him access for \$200,000.

President Clinch asked if there was any other public comment?

Ms. Tsang showed a photo taken on July 4th when they were out and it showed the wall with two colors. The original color was blue and painted yellow and she pointed out the gardener who stepped onto their structure and other photos on the roof with lead paint onto her property with different colors. The police was contacted that day and demanded they ceased all work and they said they will comply. About 10 days later, they trespassed again and the wall was painted all over. She hired professionals for inspection and they viewed it as very serious. She was advised to contact the City for inspection before the contractor would give her an estimate. Under State law, they required certification on lead paint and they had the right to ask them to comply with the law.

Ms. Tsang said she maintained her position as shown on one of many letters dated September 18th. She would grant access to her property if they were properly certified as required by law and to provide her with certification, workman compensation, liability insurance and a copy of the signed contract with the scope of work and she had legal rights to have that information. They did not provide her with any documents and refused to spend the time and effort to provide those things. The person they hired must be personally certified and who that worker will be but they did not provided any document and often personally been attacked. He filed a lawsuit in the court and claimed easement and acquired title but the court ruled they did not have an easement and they were compensated.

He prevented the project from moving forward because she gave them documents that were on her files and repeatedly informed them of the requirements for certification. When he worked on her property, he needed liability insurance for protection in case of a fall. When they were out, he later informed her he did that and she can sue him and he will move and she cannot serve him. This attitude went on for a long time because she was different and was mistreated; and there were more photos.

Vice President Melgar said she read back and forth with Joe Butler and so the trellises were hers and she did not want to remove them. Ms. Tsang said there were no laws that required them to remove anything and she granted permission to one of her neighbor, James, on the southern part to paint and remove the ivy because he provided her with the worker's name and their identification. Vice President Melgar believed they were reasonable but how much space between the trellis and the wall? Ms. Tsang said the post was attached to that and it happened a long time ago.

Vice President Melgar said the picture seemed to show there was sufficient space to do proper containment and to stabilize the paint underneath and believed there were about 5 inches and insufficient space to do proper abatement. If Dr. Engelberg covered the cost, would she agree to

let him remove and put it back? Ms. Tsang said she wanted to be comfortable with the person he hired and recently pleaded with him for that information if the worker was certified and his company was EPA certified that will work on her property. Vice President Melgar said she agreed with her but the issues from Attorney May's statement, representative of Appellant, seemed they will hire a certified contractor and hopefully provide her with the evidence of certification of his workers. If they went that far, it seemed like the next impediment was the trellis because the paint behind it was fairly damaged and if she would agree.

Ms. Tsang will accept if it was reasonable and was comfortable with the necessary information they will provide her. She disagreed that everyone was treated equal especially in San Francisco, a liberal city. As happened in the past, she believed they were racially biased in discrimination of their rights if they were ethnically different or of Asian national. In the courtroom, she asked him to make assurances he will not damage her property instead he had an attitude and was disrespectful and threatened "to come to her property at anytime as he pleased" which continued even today.

He wasted her valuable time by not providing the needed documents and this was someone who came to her property to certify the identification but she once had other laborers comply with her request and taken two days to finish the job. He had refused for many years to comply to her requests and wondered why he believed he did not need to comply with the law. She was cooperative since the beginning as indicated by her recent and last letter to him. He showed he was not responsive or cared if there was a Notice of Violation but she attempted many times requesting him to provide the necessary documents but he did not respond or ignored her requests.

Vice President Melgar asked if they tried mediation? Ms. Tsang said she would have except she was under pressure when her mother became ill and recently died. She wanted to exchange some information but instead they asked her to remove everything. She was not an expert but were aware of the contamination and it was covered up and unidentifiable with blue and currently painted partly yellow and more than once. When she contacted the City for an inspection, she had an estimate of \$1,875 but that estimate was created fraudulently. The contractor was in business for 25 years, certified with liability insurance including 21 years with the Better Business Bureau. She hoped the Board understood she wanted to be comfortable with the right choice but disliked their "come and go" attitude.

Vice President Melgar asked if there were children under the age of 6 that resided in her property? Ms. Tsang said perhaps the next door building but not in her building. Commissioner Mar made clarification of Vice President Melgar's question. It was very clear from this Department that they wanted this abated with a certified person on the process of lead abatement and the painting contractor may be present today. If the person was certified by the State of California on lead abatement and supplied her with all the necessary documents and specified timeframe, would she agree to allow them access on her property only for that specified time to commence work?

Ms. Tsang said he must specify that his company was EPA certified and the worker that performed the work including the company, although it may be different, the person that

performed on the lead paint in California should be California certified and that was her position since September, as detailed in her letters. They should work amicably together instead of evading the situation and always personally attacked her on a request to provide her documents that was required by law.

President Clinch asked if there was any further public comment?

Chief Inspector Bosque clarified that she had just received the document from the painting contractor and to him as an individual and was certified as renovator regarding lead base paint. From her previous statement, they sent this to an Administrative Hearing for the parties to get together for the Hearing before the Hearing Officer and wanted to commend the Board and believed now that both parties were before them and there were some movements. The complainant should be aware that this Board had power to continue this for some period of time and if the proper documentation was not provided to Ms. Tsang and she failed to cooperate, the Board had that power. Since she was the complainant and interested, in fact, in getting the work done and provided the documentation, if they can structure this with the Board's great guidance, they might find some closure today.

Vice President Melgar asked about the certification before her and at Ms. Tsang's request, did the contractor as being properly certified provided any evidence that his workers were trained and certified? Chief Inspector Bosque said on the EPA requirement? She currently received the documentations and perhaps they can answer that.

Phil Lubin, general contractor, said he was not a painting contractor and this conversation was extremely complicated. There was a lot of language that was used in this conversation that placed him in a very difficult position because they talked about lead repair and renovation per the State of California, EPA, HUD, abatement and remediation and those were all different things. He was not certified to do abatement and remediation but he and his workers absolutely were trained to repair and on renovation within the City of San Francisco and generally within the State of California because there were so many buildings that were pre-1978.

Typical disturbances of lead base paint like scraping, sanding and/or basic prep, removal of drywall and trim came under repair and renovation. The abatement was a different procedure designed to last over 20 years and was not a maintenance issue and the remediation went beyond that and was not certified for those things. He was a repair and renovation contractor and never had issues with his certification or his work in San Francisco or Marin.

Vice President Melgar said she asked only if his workers were properly RP certified and it seemed the answer was yes and that was all they asked about the Notice of Violation. Mr. Lubin said he did not want to hear that if he personally did the work and if the State did not feel he was working within the confines of the Law. The truth was in San Francisco with the Building Department as it currently stands and with the State Contractors Licensing Board, he had all the qualifications necessary to do this work and have training logs as EPA required and all the documentation and containment would be done per EPA requirements.

Vice President Melgar said she was familiar with a couple of things about the law on lead and

believed his workers were RP certified and a 3-day training for them and she heard that his workers were trained with no certification. Mr. Lubin said he was certified as a supervisor and his company was certified. They were trained and as their supervisor, he logged their training but they personally not required to attend a certification class. As a qualified employee of the company, he went to an 8-hour RRP certification class and his workers were not legally required to go through training because he was legally allowed to train them and as their supervisor he was required to maintain all the best practices.

Commissioner Mar asked about a photo taken by Ms. Tsang, was that one of his workers or a gardener? Mr. Lubin said it was not one of his workers.

President Clinch asked for any other public comment? He did not know how they could uphold the abatement on this issue because there were too many quarrellings ongoing and as Chief Inspector Bosque stated fortunately there were movements today but they should grant some sort of a continuance so this can and hopefully will be resolved.

Chief Inspector Bosque said they tried their best to resolve this matter before it came before the Board but it had to come to them before this happened. Her recommendation was to give the property owner 3-6 months with certain guidelines by the complainant that she understood that this was not an abatement or remediation, but this was a repair, as stated on the staff report. Abatement was a completely different thing. If the property owner provided her with A, B, C and D, there should be a commitment on her part and they can return and report. It was a rare instance and wanted to say this was an exception but if they cannot get the concurrence, there could be a possibility the case could get administratively closed if they cannot get that cooperation and wanted to offer to the Board for consideration.

President Clinch said they will cross that bridge when they get to it. Commissioner Lee asked what were those A, B and C items? President Clinch said to provide the documentation she had requested with the certification and that she provided access to her property.

Attorney May said Ms. Tsang already pointed out to the Commission that she received the certification and gave the Board a document with the certification. From the contractor's testimony, he was certified and met all the requirements. It may not be the requirements she thought he needed to meet but that did not mean he had not met the requirement of the law and that was the issue here. If the Board structured their order to her satisfaction that was not conducive to progress because there had to be some objectivity here and just because she felt she needed something that can also change and it had as she had originally requested certification. The issue of California State Certification as opposed to EPA certification that recently came up last week and it had been 15 years and there was nothing to prevent that from continuing. What she requested cannot be left nebulous and there have to be some objective guidelines issued by this Commission that made sense that would be reasonable and legal.

President Clinch said they did not have that jurisdiction. Vice President Melgar said they can only go as far as they can go within their administrative purview in what they can do. They can also not grant the continuance and it was sort of their leverage. From where she sat, she advised he should be a little more flexible and did only what was legally required, which was the bare

minimum and probably what he did. Sometimes when they were emotionally invested in something and a conflict would be difficult to take that next step and it seemed that was required and perhaps he should step back. She never met him before but she listened to him and it appeared he did a lot of attacks at Ms. Tsang, which was not necessary and wondered if he could come up with something more acceptable and satisfactory to Ms. Tsang and they could grant a continuance and return to resolve it.

Vice President Melgar said Mr. Lubin seemed to be a completely reasonable man to send one of his workers to a RP 8-hour training would cost a couple of hundred dollars and probably pay for it, including an offer to cover the cost of removing, putting the trellis back and some fertilizers which would satisfy Ms. Tsang. From the rhetoric they heard and seemed they went through all of this before and they were stuck. Perhaps he can prepare in writing that went slightly beyond and return in a month to see if it had not worked or they will take the next step. Until now she had not heard he at least been there.

Attorney May confirmed it happened before and they went through this process and will do it again at her request. They were stuck and sensed his frustration because this was not the first time they addressed this issue, as indicated on their reply and Exhibits 2, 3 and 4. They recently tried to resolve this in an intelligent and adult fashion as seen by the results. They will make an effort with a new idea to satisfy Ms. Tsang with her concerns and return to her.

Commissioner Lee said they would like to see three things to help them make a decision next month, 1) if they have communicated the certification paper for the workers and the company to Ms. Tsang, 2) if he presented her with the plan on how he proposed to paint that wall, such as will there be set up of scaffolding, how his workers will access or paint that wall and the timeframe, 3) if there was a plan to remove and replace the trellis when painting.

Attorney May said the Board were already provided with those three items and a copy of the certification before them including emails contained in Exhibits 2, 3 and 4, the certification and the numbers. They can identified the workers who will actually be on the job assumed they will have the job in the next couple of weeks but they cannot obviously know who, if Ms. Tsang objected, or if this process would be 6 months from now. They will remove and replaced the trellis at Dr. Engelberg's expense and from Vice President Melgar's statement, some of the wall cannot be painted because the trellis prohibited it.

Dr. Engelberg said it was ridiculous to ask them to come to an agreement because it had not happened and the only progress made last week was Mr. Butler, on her behalf, asked her to remove the trellis. She responded that she placed wiring around it and made it totally impossible to remove or paint around it and she went on the opposite direction of what you wanted done. After 15 years of this and asked them now to take any further steps, "negotiating with her in good faith" wasted his and the Board's time and money.

Vice President Melgar said they were in a position with no choice but to pursue the negotiation on the violation and if they were stuck. Commissioner Lee said they were not saying they decided one way or the other now and would like to see if he can make one more effort to reach out and that was all.

Commissioner McCarthy said he noticed the tensions were high and felt the frustrations on both sides. A lot of the work was done, which was good, as Commissioner Lee pointed out as a good faith effort. They understood and listened to the Appellant's concerns and asked them to recap these concerns even though they dealt with them before and asked them to do that within a time frame. He agreed that 3-6 months was very long to ask for and agreed with a shorter period of time because a lot of the work had been done for conclusion and he did not know how the Commissioners felt about the timeframe. With the interest of moving this along and most of the outreach done and at that point if there was still resistance, they can make some good decisions with regard to this.

Attorney May said they will make their best faith efforts to resolve this issue prior to their next regularly scheduled Hearing and hopefully return and report to them there was an agreement and in fact resolved the problem. Commissioner Mar said this was a long and frustrating process for them too but they cannot go back 15 years and would implore both sides to process it again even though they believed it was done. They can go only by what was said from both sides in this meeting. From the Department's point of view, it was important to understand that Mr. Lubin was totally qualified to do the work and if he was the contractor of record, resubmit it again even if it was done. With all those caveats, time was important and they would allow an extension for a shorter period of time or at least start the work.

President Clinch said it would be Ms. Tsang's best interest to cooperate because it was a dangerous paint that was on her property and asked for any public comments.

Robert Davis suggested an idea to paint both sides and have Dr. Engelberg pay for both and it would be cheaper. Painted both sides, her contractor, 3 bids, end of story. President Clinch asked what the timeframe was on the motion and what was decided? He wanted to see some progress and suggested to the next meeting of May 15th, as time was ticking.

President Clinch made a motion, seconded by Commissioner Lee, to continue to the next meeting of May 15th.

Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried unanimously.

F. CASE NO. 6777: 1325 Portola Drive

Owner of Record and Appellant: Sofia U. New, 219 De Long Street, San Francisco, CA 94112

ACTION REQUESTED BY APPELLANT: To put the process on hold due to the suspended permit.

NOTICE OF DECISION: After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: to uphold the Order of Abatement and Assessment of Costs.

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division, said this was a vacant lot at that time and the first Notice of Violation of May 31, 2011. The violation of 500 cubic area of earth was removed without a permit resulting in unapproved cut of 12 feet height. On August 14, 2012, an Order of Abatement was issued with conditions and a permit was issued in July 15, 2011, Permit Application #2011-0712-0010, to install temporary shoring and that work had not completed yet and if it were completed, it would clear the violation. The staff recommended that the Board uphold the Order of Abatement and imposed an assessment of cost.

Sophia New, Appellant, explained some of the ongoing problems. This was a vacant lot and a brand new construction and there were several mistakes made from either the permit, the Building and Planning Departments, etc. It was appealed and re-appealed by her neighbor which was a very time consuming and administrative part. They attended the Board of Appeals and the neighbor made the same complaint that it was not built according to the approved plans but the Building Inspectors were present and it was perfectly built according to the approved plans.

The contractor was building while on the third floor and comments were made about blocking their 5:30 sunset light or something similar to that. It was not a substantial complaint and went through that. Last month was the last appeal which was appealed again although there were no changes they went through it all again. It was unanimously approved and should be allowed to continue and she did not understand the Notice of Abatement. She believed they should not penalize her if the Building Department improperly issued a permit, as proved by a letter. If this penalty was valid, she had the right to appeal and since if it was approved she has the right to continue building without constant interruptions by the City which seemed they were always against the owner.

President Clinch said the Department can elaborate further since it appeared there were more details than that and the Appellant can return to speak after the Department.

Inspector Hinchion acknowledged there was a permit appealed and was recently reinstated but that permit being appealed had no affect for the permit issued for this violation. They wanted to encourage the property owner, although the permits may be appealed, they were not impeded from completing the work and the permit which was valid should clear this violation and hopefully done as soon as possible. There were outstanding special inspections for compliance and have the permit signed off and they would no longer have concern on danger. Keep in mind the reason, it may have been appealed on an unrelated permit because the dirt was removed before the site permit had graduated to a full permit and possibly some bad atmosphere was created in the community. Aside from that, they hope they complete the work on this permit as

soon as possible and closed the case if they provided a signed permit.

President Clinch rephrased what the inspector stated earlier that the permit was granted for temporary shoring but no shoring had been installed instead there was a vertical cut. Inspector Hinchion said shoring had been installed but they needed special inspections cleared and obtain final inspection for shoring and she was very close. Possibly the other permits were appealed and they believed they were not allowed to work under this permit and in his opinion it was an error. Vice President Melgar said all she had to do was schedule an inspection and the work was considered in compliance for this violation.

Inspector Hinchion said her engineer should submit any related documents and have those cleared for special inspections and to schedule a final inspection to resolve the matter. While the work was not done, he recommended the Board uphold the Order of Abatement to allow her to pay the initial fees and if they have a signed off permit, it would be abated with the final fee. When an Order of Abatement was issued, the Department was allowed to recover their outstanding fees of \$1,007.50 and not because her contractor proceeded without a permit as questioned by Commissioner Mar.

Commissioner McCarthy said the shoring was in place and plan checked by DBI and was put out there. Inspector Hinchion said the shoring was in place but unsure if there were inspections adequately on how safe if it was correctly done. Commissioner McCarthy asked if they were currently allowed to work on the other phase of the job? Inspector Hinchion said he understood the house had been completed. Commissioner McCarthy said he passed by it every day and was familiar with that and wondered why it sat there. He was concerned why a shoring was in place without the proof of special inspections and any set of plans or if any engineer was present today and if there were any background checks done.

Inspector Hinchion said if they uphold the Order of Abatement today that would encourage them to just complete the work on that particular permit, regardless of the other work and when the permit was signed off, they will know there were no longer unsafe conditions regarding that particular area. Commissioner McCarthy said he was wearied about the fact they did not have some professionals to reinforce the fact that shoring had been installed and waited why the inspections were not done and no back up. Inspector Hinchion said he represented the Department and not the other side. Commissioner McCarthy said he duly noted.

President Clinch said there were no other comments and asked for Appellant's rebuttal. Miss New, Appellant, said she had the job card with her and everything was stated. All the plumbing for the foundation and everything were done on the 3rd floor but still it was suspended. Vice President Melgar asked if she understood this was specifically for the shoring of the soil that was taken away and not for everything else? Miss New said the shoring part of it because of this statement she can start building. Vice President Melgar said for the properly inspected, she needed to close the loop on that. Miss New showed the card for temporary shoring and payment for the permit, etc. She wondered why her contractors did not communicate with the City inspectors when their signatures were on the job card.

President Clinch asked what prevented Miss New or her contractors from obtaining the special inspections and have an engineer's letter stating the work was done? Miss New said she did not understand and partly because she hired him to do the work but it took so long for Planning Department to respond, the height of her neighbor and the present project which took a year to correct that particular project.

President Clinch asked if there were two different projects? Miss New said they suspended and they received it last January, the following day it was suspended and did not understand that. She should always have notices in written form when someone complained and not through the phone when it was suspended. She was contacted yesterday regarding the permit was appealed again and caused further delayed on the completion. This simple problem can be resolved if the architect presented an accurate height instead of ceased work and was not related to the approved plans.

President Clinch said typically DBI required the drawings stamped with approval and listed the required special inspections which her contractor should be very familiar with what was required. Secretary Sweeney said before the permit was processed, it went with the permit and attached to it and indicated what special inspections on the plan and was very clear to follow. In addition, this case started well over a year ago when the defendant had a site permit and started construction. It was a fact that no work can started on a site permit and wait until the first addendum comes out for the foundation retaining wall and that was how they first went there and that poisoned the water with the neighbor and here they were. Miss New said she wanted to appeal and requested the penalty be waived since it did not originate from her.

Secretary Harris said there was no further public comment on this item.

President Clinch made a motion, seconded by Vice President Melgar, to uphold the Order of Abatement and the Assessment of Cost.

Commission Secretary Harris called a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>

The motion carried unanimously.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment.

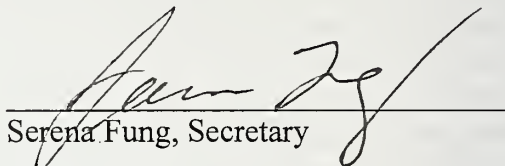
G. ADJOURNMENT

President Clinch made a motion, seconded by Vice President Melgar, that the meeting be adjourned.

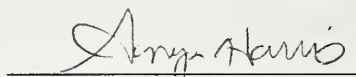
The motion carried unanimously.

The meeting was adjourned at 11:26 a.m.

Respectfully submitted,



Serena Fung, Secretary



Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, May 15, 2013 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on March 20, 2013.

D. CONTINUED APPEAL: Order of Abatement.

1. CASE NO. 6773: 1316-22 Mariposa Street

Owner of Record and Appellant: Richard E. Thomas, Environment & Land Management, P.O. Box 877, San Leandro, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting that the Order be reversed and that he be reimbursed for the cost of this appeal.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272
Myrna Melgar, Vice President	Sonya Harris, BIC Secretary (415) 558-6164
Frank Lee, Commissioner	Teresita Sulit, Recording Secretary (415) 558-6267

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney

(415) 554-4634

2. CASE NO. 6775: 481 Minna Street

Owner of Record and Appellant: Nikita Holdings LLC, 579 O'Farrell Street, San Francisco, CA 94102

Agent for the Appellant: Robert Noelke, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The appellant has requested three (3) to six (6) additional months to complete the required code abatement work cited.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

3. CASE NO. 6776: 767 North Point Street

Owner of Record and Appellant: Charles B. Engelberg, 767 North Point Street, San Francisco, CA 94109

Owner of Record and Appellant: Charles B. Engelberg, 4 Birdie Drive, Novato, CA 94949

Attorney for the Appellant: David Edward May, 476 Jackson St., 3rd Floor, San Francisco, CA 94111-1624

ACTION REQUESTED BY APPELLANT: The appellant is requesting the Director's Order be overturned and requesting the Abatement Appeals Board's assistance in resolving the outstanding code violations.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. CONTINUED APPEALS: Request for Jurisdiction:

1. CASE NO. 6772: 3558 San Bruno Avenue, 3562 San Bruno Ave., #1 & #2, and 3580 San Bruno Ave., #1 to #4

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting more time to complete the work and for a waiver of the assessment of costs.

2. CASE NO. 6774: 3556-64 San Bruno Avenue AKA 1265 Girard Street

Owner of Record and Appellant: Richard Thomas, Environment & Land Management,
P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting a waiver of the
assessment of costs.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

p:aab\agenda\5-15-13.ts

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available. Assistive Listening devices will be available at the meeting. A sign language interpreter will be available upon request. Agendas and Minutes of the meeting are available in large print/tape form and/or readers upon request. Please contact the **Deputy Director and Secretary to the Board, Edward Sweeney at (415) 558-6142** or the **Building Inspection Commission Secretary, Sonya Harris at (415) 558-6164** or the **Recording Secretary, Teresita Sulit at (415) 558-6267** at least 72 hours in advance of the meeting to request for these services.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call (415) 558-6164 or (415) 558-6267 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such persons, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

POLICY STATEMENT OF PUBLIC HEARING OR MEETING

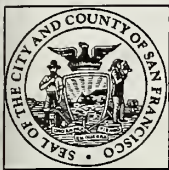
Pursuant to Section 67.7-1(c) of the San Francisco Administrative Code, members of the public who are unable to attend the public meeting or hearing may submit written comments regarding a calendared item to the Secretary, at 1660 Mission Street, 3rd Floor, San Francisco, CA 94103 or at the place of the scheduled hearing before the proceedings begin. These written comments shall be made a part of the official public record and these comments will be brought to the attention of the members of the Abatement Appeals Board. [Twenty copies are necessary.]

POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

SAN FRANCISCO LOBBYIST ORDINANCE

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Administrative Code Sec. 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market St. #701, SF, CA 94102 or (415) 554-9510 voice, or (415) 703-0121 fax, or <http://www.ci.sf.ca.us/ethics/> - web.



ABATEMENT APPEALS BOARD

Wednesday, May 15, 2013 at 9:10 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED August 21, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, May 15, 2013 was called to order at 9:10 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President

Myrna Melgar, Vice-President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Debra Walker, Commissioner

Dr. James McCray, Jr., Commissioner

Sonya Harris, Building Inspection Commission Secretary

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D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Rosemary Bosque, Chief Housing Inspector

Patrick O'Riordan, Chief Building Inspector

Andrew Karcs, Senior Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on March 20, 2013.

Commissioner Mar made a motion, seconded by Vice President Melgar, to approve the minutes of March 20, 2013.

Commission Secretary Harris asked for public comment on the minutes and there was none.

The motion carried unanimously.

There was a request to have an item heard out of order on the Agenda and President Clinch granted permission to hear **Item number 3**.

D. NEW APPEALS: Order of Abatement(s)

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal, discussion and public comment.

3. CASE NO. 6776: 767 North Point Street

Owner of Record and Appellant: Charles B. Engelberg, 767 North Point Street, San Francisco, CA 94109

Owner of Record and Appellant: Charles B. Engelberg, 4 Birdie Drive, Novato, CA 94949

Attorney for the Appellant: David Edward May, 476 Jackson Street, 3rd Floor, San Francisco, CA 94111-1624

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the Director's Order be overturned and requesting the Abatement Appeals Board's assistance in resolving the outstanding code violations.

NOTICE OF DECISION: The AAB heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: Uphold the Order of Abatement and assessment of costs, provided that (1) the Order shall be held in abeyance for 60 days; (2) the Appellant is required to complete all work within 60 days. All time periods specified in this decision become effective on the date of the Notice of Decision. The Abatement Appeals Board may rehear an appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision.

Rosemary Bosque, Chief Housing Inspector, said this particular item was continued from last month's Abatement Appeals Board with direction by the Board to the property owner with some requests to the adjacent property owner and the Appellant. She provided the Board with updated information they requested the adjacent property owner to give them access to the property for the purposes of taking photos to show them what the property looked like approximate to today's meeting.

Unfortunately, the adjacent property owner was not willing at this time to facilitate that inspection. The Board had certain requests of the property owner and a representative of the adjacent property owner repeatedly asked for a copy of the contractor's certification given to her during the meeting and commented about the Appellant produced that for the purposes of answers on these items were discussed and returned to the property owners' representative. They had that information with copies of the certification to the adjacent property owner, Miss Tsang. Those were the new items and as indicated from their email, the other item was the property owner had repeatedly asked them about the remediation which was a City requirement and they responded it was not.

Any licensed contractor doing the work must comply with the Notice of Violation with State regulations as well as EPA regulations. Obviously, if it were over 6 square feet of material, they may need a remediation contractor but that was not within the content of the lead-safety practices ordinance of the San Francisco Building Codes, although she stated at the last meeting and clarified again through this testimony on the email they sent to the Appellant's representative. Perhaps they needed to hear from the Appellant and adjacent property owner.

President Clinch reminded everybody that the Department and the Appellant each had 7 minutes presentation, 3 minutes each for rebuttal and 3 minutes each for public comment.

David May, attorney for the Appellant, Dr. Charles Engelberg, said immediately following the last Hearing, Dr. Engelberg wanted to use Mr. Lubin, the contractor but attempted unsuccessfully to sway Miss Tsang, the adjacent property owner, regarding her concerns. They decided to use the contractor, Dougherty Reconstruction Company that Miss Tsang requested some time ago. Mr. Lubin contacted them and received an estimate that was simply a statement of an hourly rate which was unsatisfactory. He later contacted the Dougherty Reconstruction Company himself and spoke with their agent, Mr. Burt, who sent out an estimate for the job that needed done specifically on the remediation, the abatement or the Notice of Violation with respect to the lead-based paint.

They waited for an estimate from the Dougherty Reconstruction Company. At the last meeting, they talked about the lead-based paint that was flaking from the complainant, Miss Tsang's property and brought a photograph of that as well. The Department stated they tried to get on the property to take pictures but Miss Tsang would not allow them. They had the photographs of that and can show the Board but they needed more time. They preferred to re-schedule to the next Hearing since they agreed to hire the contractor that Miss Tsang wanted. He did not think there was any problem since Miss Tsang already stated on the record she felt this contractor had all the appropriate certifications and would accommodate her if the estimate was reasonable to the Appellant. He asked to expedite this Hearing and requested to take it out of order because he had obligations at the Superior Court at 9:30 A.M.

Chief Housing Inspector Bosque said whenever they could assist the parties to get together to get this done, they would be totally supportive.

Attorney May said they were still waiting for the estimate from the contractor and assumed it may be a matter of a day or two to do the work. The biggest problem was to get the adjacent

property owner or complainant, Ms Tsang, to cooperate with getting this done. At this time, there was no need to get into more details and they had documents if the Board needed to see them but requested to put the matter over until the next Hearing.

Commissioner Lee said just for the record, he wanted copies regarding communication with the Dougherty Reconstruction Company. President Clinch asked if there was any public comment.

Attorney May said just for the record, he showed an email from Phillip Lubin which described his conversation with Miss Tsang. Also attached was his certification the Department had discussed and placed that into the records. He also showed a photograph of Miss Tsang's building for the area affected and a clear view of the peeling paint off the side of the building. This building was built prior to the ordinance cut-off date and the peeling paint was presumed to be a lead-based paint and the Board can keep these photographs.

He also showed a record of the complaint against Miss Tsang for lead-based paint that Inspector Harry DerVartanian cleared a day after the complaint was made related to the front of the property where she painted but for some reason the inspector had not cited her for the lead-based paint that existed on her property but cited only his client for the paint chips that were on Miss Tsang's property. At least some of those chips were coming from her building and not just from his clients building. They did not need to go into these issues, but wanted the Dougherty Reconstruction to fix this matter and be done with it.

President Clinch asked if there was any other public comment?

Joseph Jones said he resided at Miss Tsang's property. On Charles Engelberg's letter which he submitted to the Board and in the Board's file, he admitted his worker scraped paint from his wall and the paint scraps dropped on her property. His letter proved he intentionally created an extremely hazardous environment in Miss Tsang's yard and obviously did not use containment which in fact they committed unsafe work practices.

He referenced the State law and their website and quoted "Is lead certification required for the type of work I do? Will you be working to reduce lead in California? If you planned to do any work designed to reduce or eliminate lead-based paint, lead-contaminated dust or lead-contaminated soil in or on residential or public buildings in California, State law requires you to be a CDPH LRC certified Lead Supervisor or Worker, Title 17, California Code Regulations (CCR), Section 36100(a)(1)."

Another photograph showed Mr. Engelberg's paint tested by the Bay Area Lead Detectors and they issued a report which proved Mr. Engelberg's paint contained high level of lead. He respected that the Board would uphold the Appeal and not let this go on any further. It had been over 10 months and nothing was done. They played games and tried to hire people that were unlicensed, unqualified and uncertified and it would not make sense to use those people on their property.

Ellen Tsang, Complainant, said Mr. Lubin talked with her for 5 minutes outside and stated he was not required to be State certified and probably did not want to do the job. The inspector

came to her property twice and took 32 photos. They had not responded to her emails why they wanted more photos. The paint was scraped a long time ago and her backyard had been painted twice all these years. It was untrue they cannot do the work because she refused them access and testified she asked them to use the contractor she preferred sometime in August but they refused because “it was fraudulently created and too expensive.” Since August, she wrote numerous letters requesting them to have certified people but they were not serious.

About 12 years ago, she gave her neighbor access to paint his wall and this year gave him access to remove ivy on his wall. Her requirements were the same as for Dr. Engelberg except they complied immediately and completed in two days. She wanted the Board to know she was not the problem because the Appellant refused to use the State certified workers in compliance with the law. The Dougherty Reconstruction Company was acceptable to her but they refused to give her details and not use their \$65 an hour contractor. They contacted another company provided by Mr. Gossett, who was present today.

Vice President Melgar said her neighbor received a detailed estimate from the Dougherty Reconstruction Company, with expertise on lead paint remediation and at least 20 years experience with remediation in the City. If that was already in process, why would she not agree to wait until they can provided details to her later or was it no longer acceptable to her? Miss Tsang said they wasted a month, provided her nothing and disobeyed the Board’s orders. Since they had not complied with her request, she contacted another company which provided her details and certifications. It had been 10 months now with tenants residing there and she cannot trust them.

Vice-President Melgar asked what kind of detail Ms. Tsang wanted? The Dougherty Reconstruction Company had all the certifications and experts in lead remediation and at \$65 an hour was very reasonable. What had she expected since it was agreed by her neighbor to directly hire and pay them. Her neighbor should be more concerned since they did the hiring. Miss Tsang said the last time he was under oath and testified many times he will do this and that. She also contacted the Dougherty Reconstruction Company and wanted a detailed ready to do the work. She wanted to know the timeline but they had no interest to provide details.

Vice President Melgar asked if the Dougherty Reconstruction Company gave her neighbor a detailed scope of work and provided her with a timeline that was acceptable. Miss Tsang said she wanted a timeframe and to preview the contract before acceptance because they indicated no interest to provide more details. Vice President Melgar said for the record, if they provided a detailed scope of work and a timeline, would she allow them access to the property to get it done. Miss Tsang insisted to approve the details first. She distrusted their phony promises because they defied and disrespected the Board’s Order which was no different. She trusted them since last year but no action and this was the timeframe after a month had passed. She indicated Mr. Gossett had a detailed scope of work based on items 1-10, the types, how many types of plastic and it may take about 6 or 7 days to do the work.

President Clinch asked for any other public comment.

Henry Glasser, Attorney for the owner of Miss Tsang's property. They should be able to solve the problem of who will do the work. The other important matter besides the scope of work was the qualifications of the company or person that will do the work. If they had licensed, experienced people submitting a detailed scope of work, there would be no problem to have the work competently done as quickly as possible.

Ray Hartstrapper, San Francisco Open Government, said he knew Miss Tsang for a number of years while on other appearances before different Boards and Commissions. They knew this was a contentious issue especially there was a Notice of the Violation against the neighbor who required access to the adjacent property to abate the violation. There were many allegations, charges, etc. He was a licensed insurance broker in the State of Hawaii for 14 years and taught insurance for AIG, the largest property and casualty insurance firm in the world and their firm basically reviewed the issue of liability.

Miss Tsang said that she had been told a lot of things but she wanted assurance they hired a fully certified, qualified worker in accordance with the State law. From the pictures, there was a fence on her property adjacent to the building which had to be moved and if they moved the fence, can they guaranteed to replace in good condition or better, etc. Miss Tsang was at the point of uncertainty if the contractor hired was properly trained, certified and insured for any damage will be covered. Obviously it may be a case that would end up in court because if they removed a fence and replacement was not in good condition they have yet another problem.

The issue with the paint on Miss Tsang's property was kind of a red herring which you would file a complaint with the Department of Building Inspection for an inspection. From his perspective, Miss Tsang did what any conscientious property owner would do. She asked for a detailed scope of work, a qualified and properly licensed worker and their assurance to prevent unforeseen problems while on her property that she would be comfortable with.

There was no other public comment.

Commissioner Walker said this case was very complicated but their concern was the Notice of Violation and she wanted to take a position to vote on it. She made a motion that the Board uphold the Order of Abatement and hold it in abeyance for 30 days to allow the completion of the work with all the proper and legal permitting.

Commission Secretary Harris said they can state 30 days or until the day of their next meeting of June 19th. Attorney Clark said it was taking a position upholding this but they can hold off and file for completion of the work and only the fees would apply. Commissioner Walker said the fees applied will be added. Chief Inspector Bosque said she conferred with the Appellant that 30 days was insufficient and needed 60 days. Commissioner Walker said the staff agreed to amend her motion of 60 days.

Commissioner Walker made a motion, seconded by Vice President Melgar, that the Board uphold the Order of Abatement and hold it in abeyance for 60 days to allow the completion of the work with all the proper and legal permitting and Assessment of Costs.

Attorney May said before they vote, he clearly argued at the last Hearing the Board did not have the authority to order his client to do the impossible to access the neighbor's property when she resisted under a threat of trespass to perform any work. He believed the Notice of Violation was dismissed but Commissioner Walker said the violation was still in effect.

Attorney May clarified if that was the case, his client strongly opposed it as illegal and this Board simply cannot require something that is both legally and physically impossible for his client to comply with on a neighbor's property to remediate a violation that his neighbor refused access. As they heard testimonies, the Notice of Violation should be directed on where the violation existed at a neighboring property and prevented his client from remediating this problem that went on for 15 years.

Vice President Melgar said in all due respect, they had the authority to uphold the Notice of Violation and seconded the motion to accept 60 days over 30 days.

Commission Secretary Harris made a roll call vote on the motion.

<i>President Clinch</i>	<i>No</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>No</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried 5 to 2.

D. CONTINUED APPEALS: Order of Abatements

1. CASE NO. 6773: 1316-1322 Mariposa Street

Owner of Record and Appellant: Richard E. Thomas, Environment and Land Management, P. O. Box 877, San Leandro, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting that the Order be reversed and that he be reimbursed for the cost of this Appeal.

NOTICE OF DECISION: After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: Uphold the Order of Abatement and Assessment of Costs, provided that (1) the Order shall be held in abeyance for 90 days; (2) the Appellant is required to complete all work within 90 days. All time periods specified in this decision become effective on the date of the Notice of Decision. The Abatement Appeals Board may rehear an Appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision.

President Clinch said the Department will speak first followed by the Appellant.

Chief Housing Inspector Bosque said their staff report indicated this was a 4-unit building and the Notice of Violation in question was issued in 2004. The item that remained outstanding dealt with the stairs at the rear of the structure. She showed an aerial photograph of the property viewed from the northerly direction and a side profile. A staff report and colored photographs of the area in question and the stairs reasonably appeared the same way.

There was a recent inspection by the Senior Housing Inspector Andrew Karcs and Chief Building Inspector Patrick O’Riordan. From their staff report, the permit was filed in 2005 and expired with no new permit. It was obviously done beyond 50 percent and not only the stairs were dry-rotted and without the appropriate permit, it was unsafe. A Notice of Violation was issued by the District Building Inspector who requested it be properly done and they had been at this since 2004.

This was an occupied property with concerns that the property owner was slow in response to make repairs, improper permits and not followed the required codes. From that standpoint, the staff believed the Assessment of Costs was valid and asked that the Order be upheld. They had not currently complied since cited in 2004. On the permit history and their staff report, there was no permit to address the new Notice of Violation issued from the inspection by Chief Building Inspector O’Riordan and others.

President Clinch asked if the Appellant was present and said he had 7 minutes.

Richard Thomas, Appellant, submitted a document as part of a response to the Building Department yesterday. In 2004 and 2005, there was a final inspection but no property job card. The inspector asked for another job card but the work on the deck and other areas of the property were done. He hoped the job card will be found and signed off by the inspector but had not heard from any one until in 2012 which automatically resolved by itself.

In 2009, the complaint sheet report by Inspector Jose Lopez indicated he attempted contact with him and Senior Inspector Karcs left several voicemail messages. The problem was the permit expiration date of January 25, 2009 eventually expired on April 25, 2009 the same year as their entries. The inconsistent data was presented with a final warning letter of September 16, 2009 which he had not received.

He voluntarily applied for a permit that costs \$220 for an administrative permit for \$1.00 and it should be done. Inspector Karcs asked him to bring the Building Code up to code for 2005 and asked to have an engineer completely redo the deck. The pictures showed the work was in progress and all this wood was redwood. He hired Gregory Jones, a licensed engineer, to work in the first 10 days and all the plans were satisfied with the City. He had until January 25, 2014 to complete the work but requested the Head Inspector for 90 days.

Chief Inspector Bosque said the Notice of Violation was written in 2004 and the permit had expired and the work was incomplete. He filed another permit in January, 2013 but subsequent to that, Chief Building Inspector Patrick O’Riordan was at the site and observed substantial

problems with the work that was done between 2004 and present. Why it took too long to repair the rear stairway structure in this fully occupied building since 2004? They strongly believed an Assessment of Costs should be imposed and the Order be upheld to alert this property owner that he needed to be more timely.

The Appellant read his comments from the complaint data sheet but the issue before the Board was he did not get the proper permit and it was not done. The work went beyond the scope and the proper work was not done. They needed to understand the Building Inspector went there and wrote another Notice of Violation because what he did was so catastrophic and it was in bad condition.

Chief Building Inspector O’Riordan said Mr. Thomas had the permit issued for the necessary repair to the deck and stairs. In mid-January, he was at the job site and was more concerned with the code compliant safety issue because the deck had severely dry rotted. The issuance of the Notice of Violation primarily addressed the life-safety issues on the deck and placed a tight timeline to acquire a permit for the work. He was also required to barricade the deck for use until the necessary repairs were safely made. In addition to the current Building Code, it was a life-safety issue. The permit remained in issued status and a second Notice of Violation was issued in Code Enforcement. At this point, there will be a Director's Hearing from their Department to follow up on enforcement since they had no assigned inspection and signed off for the work.

President Clinch asked the Appellant if he wanted to speak for 3 more minutes?

Mr. Thomas, Appellant, said the engineer had plans that required much of the deck to be laterally reinforced. The deck was substantial and it went from 40 feet, two-story down to a ground floor about 3-story. On the architect’s plans, the lateral support was the work of a master carpenter. They assured none of the tenants may access during construction. He worked on all the rails to assured they were strong and nothing structurally bad on some of the dry rot. The dry rot was being taken care of except the ledgers and cross pieces shown on a photograph.

Both the contractor and engineer agreed on how to build this. He referenced a letter to Chief Building Inspector O’Riordan for the updates on the effects of the tenants’ lives. On his February 21st letter, he indicated the worker was a licensed contractor whose mother was unfortunately in a coma and may delay his project. He needed at least 90 days to complete the work which was a realistic timeframe and the permit will expire in 2014 which hopefully may not go that far. Yesterday, he met with several tenants at the job site and was surprised to learn that part of an awning fell over onto the upper deck while the tenants were cooking and did things that were prohibited.

Chief Inspector Bosque said the stair and deck services can be used as a second means of egress but Chief Building Inspector O’Riordan testified it would be unsafe to do so. The City Attorney can discuss about the life-safety issue as a second means of egress and the conditions. In giving the property owner more time, they were required to address the life-safety issue, Chapter 1A of the San Francisco Building Code, considering the Board’s power, the staff recommended no more time be given.

Commissioner Walker made a motion, seconded by Vice President Melgar, to uphold the staff's recommendation, issue the Order of Abatement, and hold it in abeyance as long as it was in compliance that the work must begin within 30 days and be completed within 90 days including the Assessment of Costs.

Commission Secretary Harris called for a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried unanimously.

2. CASE NO. 6775: 481 Minna Street

Owner of Record and Appellant: Nikita Holdings LLC, 579 O'Farrell Street, San Francisco, CA 94102

Agent for the Appellant: Robert Noelke, 1019 Howard Street, San Francisco, CA 94103

ACTION REQUESTED BY APPELLANT: The Appellant has requested three (3) to six (6) additional months to complete the required code abatement work cited.

NOTICE OF DECISION: After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: Uphold the Order of Abatement and Assessment of Costs, provided that (1) the Order shall be held in abeyance for 60 days; (2) the Appellant is required to complete all work within 60 days. All time periods specified in this decision become effective on the date of the Notice of Decision. The Abatement Appeals Board may rehear an Appeal upon which a Decision has been rendered, provided a request for a rehearing has been made in writing 10 days of the date of the decision.

Rosemary Bosque, Chief Housing Inspector, said this was a continued case from last month's AAB meeting and it was the Auburn Hotel with 78 guest rooms, 29 tourists and 49 residential. In the staff report that the Board received, there was re-inspection around the last Hearing of April 24th and the Housing Inspectors' observations. There was substantial progress made but none of the existing residents were relocated. She will later speak about the plan and spreadsheet the Board received prior to the Hearing.

It was a year ago since the Notice of Violation was issued and there were approximately 214 individual violations still outstanding and about 80 violations were done. Some of the rooms

were ready to be occupied but it was not the case which concerned them. While they were very happy, as shown from the photos, as a result was completely different from the past. They still had concerns that if no individuals moved to these new rooms, they would like an Order issued. She wanted an update from the Appellant on what they were doing and this was her rebuttal of what she believed at that time.

Richard Stratton, represented the owner, and said a great deal of progress was made since the last Hearing. When the staff last inspected it 3 weeks ago, he provided everyone a copy of this little demo in terms of bullet points which showed what was done with respect to 15 tenants who wanted to move when the rooms were ready and it was their priority. In the second category, another 10 to 15 rooms should be done within the next couple of weeks for tenants who later decided to move. On the third page, some of the tenants who understandably desired to stay on the same location or live on a certain floor since they lived there for a long time. Many wanted specific rooms and chose to wait until their rooms were ready to move which was underway.

The General Contractor, Larry Wong, was most knowledgeable and will later report his progress. He recommended they continue to the next Hearing and hopefully all the tenants who were ready to move will be moved and a great deal will be done upon completion. The entire scope of work changed when the owners elected to remodel the entire building which caused delays but all NOVs will be moot because of the replacement and it was not only fixing doors and there were new doors.

K. K. Chiu, consultant to the owner, said he was happy to report the progress as he proposed last month that they did the project in three phases, two months in two months. As of next Monday, they will have 15 rooms ready and hopefully the first phase will be done ahead of schedule and the second phase already started and confident it will be ahead of his proposed schedule.

Larry Wong, General Contractor of WNGS Construction, presented a status of their project. Since their last Hearing, they were close to meeting their goals for inspections and signed offs on the 24 rooms for plumbing final inspections. Yesterday they had 40 rooms ready for the electrical final inspection. She inspected her way down the building where they had more ready rooms on the first floor and signed off 10 rooms. Because they had the 24 rooms ready for plumbing, about 40 rooms for electrical without those two signed offs they cannot schedule for the building inspection. There was overlapped scheduling, either of the two today will be signed off and the two rooms were ready for building, electrical and plumbing. He also scheduled this Friday for the rest of the electrical sign offs and on May 20th, the Building Inspection was scheduled to sign off 24 rooms that were plumbing and electrical ready.

Commissioner Walker said they dealt with the Notice of Violations and did a broader remodeling than incorporate fixing these. She wanted a timeline to finish the project to cure all the violations.

Robert Noelke, Appellant's Agent, worked with the owner of the property and addressed some of the issues. In the Notice of Violations, there were 11 items in the public areas that were completed. There were 60 rooms with violations and 11 of the violations noted were completed and 39 of the 60 rooms were vacated. They continued to work on them and 10 rooms were

occupied on this Notice of Violation. They talked about only the Notice of Violation and there were 22 other general items such as lead-based paints, guestroom doors that closed improperly and three of those were done and 19 still outstanding. They had made significant progress and they had four active building permits, two electrical and plumbing permits but needed at least a month to get them completed under the permit. All the Notice of Violation items will be complied with and if they had all the clearances from Electrical, Building and Plumbing Inspectors, it would be all done about 3 days.

Mr. Stratton agreed that when all the rooms were signed off and they were at the mercy of the people scheduled to sign off the different items. Realistically within the next month, all the sign offs will be needed and two of the rooms may be ready by Friday but it was a matter of timing if the tenants were ready and wanted to move within the next 30 days or until the next meeting. As to completion of all the NOV's and everything involved, he was unsure if all can be resolved in 30 days. He conservatively anticipated at 60 days but the vacant rooms were much less pressing because they all will be fixed and primarily focused on the occupied rooms.

Chief Inspector Bosque said there were a couple of concerns and wanted to know the plan for specific individuals who refused to move into another room and how would they handle the situation since they could have simultaneously worked on those rooms. It needed completion within the next 30-60 days they chose and the overall concern was when this work was done they had 29 tourist and 49 residential rooms.

From an experience standpoint, it was important when you have this kind of remodel going on with the code violations, they had seen in the past on some buildings had chronic problems with illegal conversion of residential rooms to tourist because much of the investment was put into the property that was not done before. It did not mean they did not want the rooms repaired, etc., but she wanted the Board's assistance on commitments from the Appellant to allow their Outreach people to monitor it when they advertised these rooms when completed.

They did it according to the hotel conversion ordinance and not dealt with a chronic complaint situation of illegal rooming or illegal conversion of residential rooms to tourist use, etc., which they see sometimes as an aftermath where the building was empty because of the conditions of the property for so long through construction and the numerous violations that occurred. These were some of the things if the Board can assist them on commitments from the Appellant. She agreed with their inspectors they may need more than 30 days if they had commitments in the future that there will be viable rooms for residential use and professional operators, unlike in the past because it had been the same property owner all along.

They were required to keep daily logs, weekly reports to corresponding rent receipts. On the hotel conversion ordinance record on this property, they have filed the regular annual usage reports. During business hours at any point in time, they can view those logs through unannounced inspection as they will do in the future. They needed assistance to encourage them to work with their outreach people and be cognizant of what the future hold for this property and that would go a long way in assisting them. When they finished this, they were not operating the property on the basis of writing Notice of Violations and there would be a more professional operation and the building would not slide back which was their concern.

Mr. Stratton, represented the owner, agreed again and they will return to the Board on the progress and to request two months or two meetings. In respect with the outreach program, he will contact Chief Housing Inspector Bosque. Given the location, this will realistically be predominantly residential and it was close to 6th Street. Although these new rooms will be dormitory-like rooms, it will unlikely be for tourist use and will coordinate and work with her. The owners wanted no problems in the future and had great progress and this matter would not come before the Board anytime soon. When everything was done and the rooms were legal for them to occupy, the remaining tenants who wanted to move will be moved and he anticipated 2 to 4 weeks which depended on all the sign offs.

Mr. Noelke said they had 24 occupied rooms, 22 of the 24 rooms will relocate into the new rooms and two elected to stay in their existing rooms. There were no violations in those rooms and the plan was to quickly move them as soon as possible.

President Clinch asked if there were any public comment?

Karen Rucker, Community Organizer with Tenderloin Housing Clinic, Central City SRO Collaborative, and Pratibha Tekkey, Organizing Coordinator, Central City SRO Collaborative, part of Tenderloin Housing Clinic said they had walked through the building on April 26th, May 7th and May 14th. There were substantial progress and a good faith effort to repair the rooms which were very encouraging and appreciated the ability to have access to the building. However, the tenants still had a lot of concerns about what went on.

They appreciated the owner and operator who allowed and helped them walk through the building. They had opportunities to talk with some of the tenants and their concerns on how they will be moved. On each walkthrough, they talked with the operator and contractor on what was their process, strategy and plans and if there were concrete plans on how the tenants will be moved.

The improvements were all over the place and it was not systematic. They raised concerns about the bathrooms on each floor which were not touched at all. Because there were disabled tenants and people who wanted to be on one floor or the other, they asked the contractors about the bathroom issues which were not addressed at the same time. They provided the moving plans for the tenants today but no timeframe on how they will help the tenants move because the tenants may only have short notice to move and required help mentally.

During their second visit, some of the tenants knew about the relocation and some did not. Ms. Tekkey wondered if this particular plan came after yesterday's conversation they had with them. There were great progress and it would not happen if they had not been at the building every week or every other week and knew they were coming. Since the last Hearing, they did outreach in that building before but significant progress were done and allowed them access.

Robert Noelke said he appreciated the SRO visits and it was helpful to them too. President Clinch asked if there were any other public comment or from the Commissioners?

Commissioner Walker said they saw a lot of problem buildings and often times they were locked in battles and tried to make sure that the tenants lived in habitable conditions. She and the Commissioners appreciated the work done was great.

Commissioner Walker made a motion, seconded by Commissioner Lee, to allow 60 days to cure the violations and consider supporting the Order of Abatement and hold it in abeyance for 60 days, pending the work being done and the Assessment of Costs.

Commissioner Mar added that he also appreciated the owner working with the community group to allow them in. They needed more education of the tenants as well because of the difficult process to move them and perhaps take this opportunity to continue working with the community group to help with the tenants' education so they were not only hearing about the offer of the finished rooms from the manager but also maybe from the community group to work out what was needed for the move which would help with another voice there to educate the tenants would always be useful.

Commissioner Walker reiterated that these organizations were funded with grants from their Department to work with them. She wanted to add as part of the motion that they offered their community groups to help with the temporary relocation and re-inhabiting of the spaces and report back on the process after the 60 days if it will be resolved and it would be a great solution. Commissioner Lee disagreed with making this as part of the motion to support the Appeal and would support upholding the Order of Abatement as a separate item.

Attorney Clark said the Board can modify the Order of Abatement but they had no jurisdiction in this proceeding over anyone but the Appellant and the Department. She understood they wanted to modify the Order of Abatement to allow access but she needed to look into whether or not the Order can be modified in any way. Commissioner Walker said she was willing to separate it from the Order and hopefully they can utilize their community groups to assist them. Mr. Noelke said as a directive, they will be happy to work with them.

Commissioner McCarthy concurred with all the Commissioners. They felt this was a good model to represent when the building owner decided to do the proper thing and everybody worked together to get all the common goals that the quality of life improved in this building and he should be recognized for that. Obviously everybody concurred the next two months would probably eliminate a lot of the issues.

Based on what was said today, he was convinced they would do the proper thing regarding moving the people at the right time and did it in good faith. His position was to give him a timeframe they needed and gave the inspectors out in the field to have the right rooms ready for the right people to relocate. Commissioner Mar concurred with everything and his position was to have them relocated once they were ready.

Commissioner Walker made the motion, seconded by Commissioner McCarthy, to uphold the Order of Abatement and hold it in abeyance for 60 days to allow all the violations to be cured and the assessment of fees.

There was no public comment. Commission Secretary Harris made a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried unanimously.

E. CONTINUED APPEALS: Request for Jurisdiction

1. **CASE NO. 6772:** 3558 San Bruno Avenue, 3562 San Bruno Avenue, #1 & #2 and 3580 San Bruno Avenue, #1 to #4

Owner of Record and Appellant: Richard Thomas, Environment and Land Management, P. O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting more time to complete the work and for a waiver of the Assessment of Costs.

2. **CASE NO. 6774:** 3556-35564 San Bruno Avenue, AKA 1265 Girard Street

Owner of Record and Appellant: Richard Thomas, Environment and Land Management, P. O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting a waiver of the Assessment of Costs.

NOTICE OF DECISION (Case Nos. 6772 and 6774): Pursuant to Chapter 77 of the San Francisco Administrative Code, the AAB “may grant jurisdiction for an Appeal filed beyond the 15-day Appeal period only upon a showing by the Appellant that the delay in filing the Appeal was due to misrepresentation, mistake, or other error on the part of the City” (S.F. Admin. Code, Chapter 77.5(b)(2)). After deliberation of the evidence submitted, the AAB voted to deny the Request for Jurisdiction based on the finding that the requestor failed to demonstrate that his late filing of the Appeal beyond the 15-day Appeal period was due to misrepresentation, mistake or other error *on the part of the City*. Accordingly, the AAB concluded there was no legal basis to grant late jurisdiction in this case. Furthermore, the AAB concluded that it lacked jurisdiction over the matter because no Order of Abatement had been issued for the subject property (S.F. Building Code, 105A.2.3).

David Behr, represented the owner, said there were two Appeals related to the same building and addressed the Girard Street unit related to Appeal Case No. 6774. They filed papers yesterday and apologized for not getting them sooner but he was recently brought into this matter. The Girard unit appeared to be the sticking point for complete resolution of all of the Notice of Violations issued by the Department. The Department contended that the Gerard unit was an accessory to the commercial unit on the downstairs level but evidence indicated to the contrary that there was no evidence on record that the two were ever connected or anyone ever passed between these two units.

According to the Assessors Department's records, this building was constructed in the 1900s and they had photographs taken yesterday which might clarify the relationship between the two units. There was uncontested evidence and they had a photograph of an area that could become one day a doorway. There was no evidence it was ever broken or used as a doorway and it had very odd configuration, very narrow, very tall and it was typical of what would happened in the 1900s.

The premise of the Department's position on the Girard unit was an accessory at one time to the commercial unit downstairs and was illegally converted and carved out of a larger unit but the evidences indicated the separate unit was never connected by any means. They asked the Board to reverse the Order and finding that it was an accessory illegal unit. He emphasized the parties were on the brink of complete resolution of the entire set of Notice of Violations. In the staff report, it recognized that the parties met at the project and showed a page from the Department's records about a year ago.

Commission Secretary Harris noted they went out of sequence that the Appellant went before the Department. Attorney Clark said the Department was supposed to speak first.

Chief Housing Inspector Bosque asked if they were taking Items #1 and #2 at the same time from Section A to save time. Since this was a request for jurisdiction on Assessment of Costs, the question was the merit of this case. On the issue of the Girard apartment, it was not the position of the Department that it was an accessory commercial use. The property owner hired a structural engineer, Patrick Buscovich, to research the fact that there was not a previous building permit to legalize this apartment that front onto Girard Street and this was a double frontage property on San Bruno Avenue and Girard Street. He assisted the property owner and filed a building permit which was in the staff report. He filed a permit and later aborted the permit and he did not follow-up on legalizing this permit for the purposes of a standalone unit. It did not show on the permit history previous to any record. His agent assisted him with the filing and they signed off the permit while that was in process but the property owner aborted the process.

On or about May 23, 2012, they met with the property owner to discuss his concern with the Assessment and Costs of all the various open cases he had for the two properties on San Bruno Avenue. At that meeting was herself, Senior Housing Inspector Andrew Karcs, District Inspector Danny Mak, Mr. Thomas and his agent, a structural engineer, Patrick Buscovich and they talked about all the Assessment of Costs that were opened. Mr. Buscovich assisted him with the illegal unit issue and the Assessment of Costs associated with Complaint Tracking Number #201127 or #401 with about \$2,200 set aside and not charged to him. It was a good faith gesture because Mr. Buscovich assisted him through all the other numerous violations and

they worked with him for quite a period of time on these two properties. They followed up with that and not placed a lien but went before the Board of Supervisor last year.

In review of the detailed discussion and the various line items, they felt nothing could be taken off because they spent an exorbitant amount of time with this particular property owner. The issue of the illegal unit was not an issue of any merit because they signed off on a permit that he had to take through the process which he aborted. There was no permit history to show that it was ever a stand-alone permit, the 3-R report showed it was not, etc., and his agent also did the research and proposed it was not an issue.

They set aside those Assessments of Costs except all the other Assessment of Costs for the other property was valid. They went through with him at a meeting and whether the Board took jurisdictions or not, those were the facts the Board needed to be aware of. Right now, aside from the \$2,200, the Assessment of Costs was about \$22,000 for the open cases because of the time had accrued. You heard testimony from the Mariposa 2004 case so you can see how much staff time was spent. In a good faith gesture, about \$2,200 was set aside but they still have others.

Attorney Clark clarified this was a request for jurisdiction and the Building Code Section 77.5 stated the Commission may grant jurisdiction for an Appeal filed beyond the 15-day appeal period only upon a showing by the Appellant that the delay in filing the Appeal was due to misrepresentation, mistake or other error on the part of the City.

Commissioner Lee wanted some clarification on the two different cases. He asked about the second Case #6774, the Girard Street, if that was the four units and a commercial space and the fourth unit was considered as installed without a permit and that was the violation? Chief Inspector Bosque said it was a stand-alone unit and a violation.

Commissioner Lee said they have since placed an Order of Abatement on it and the Order of Abatement Appeal period had passed and the Appellant now asked the Board to take jurisdiction because the time had passed? Chief Inspector Bosque said he was not in compliance with the Notice of Violation, although he filed a building permit and later aborted it. They signed off the building permit and the Order of Abatement was placed on the property. She did not know if this 4-unit was permitted by the Zoning Department. She showed a photograph of a kitchen and an area that showed the type of wall which was not originally there and if it was a dwelling unit at all, it was an accessory to the commercial use and they gave them a benefit of a doubt.

Commissioner Lee asked what was the violation on the other appeal case with the two properties and if it was related to the fourth unit? Chief Inspector Bosque said it was an assorted type of things and not necessarily related to the fourth unit but there were other issues. On the second case, an Order of Abatement was placed on both properties and time had passed. Attorney Clark clarified that on Appeal #6774, there was an Order of Abatement and maybe it was confusing and not in the packet. Chief Inspector Bosque said he did not appealed the Orders of Abatement but on the issuance of the Assessment of Costs and passed beyond the 15 days allowed.

President Clinch said the Appellant can resume earlier presentation and allowed him 5 minutes. Attorney Clark clarified she did not know what was the normal practice if he was to speak to

both Appeals but she wanted to make sure he would be allotted 14 minutes. Mr. David Behr, represented the owner, wanted to speak on both Appeals and to reserve the extra time. Attorney Clark said it was up to the Board and she wanted to make sure he addressed both issues as a consolidated Appeal. Commissioner Walker believed their staff can clarify one of those questions.

Chief Inspector Bosque said on the complaint tracking number associated with the illegal units, they waived the fees when Mr. Buscovich filed a building permit application and was not scheduled to a Director's Hearing and did not have an Order. The problem was the building permit filed was aborted so they have an open case. At a meeting with them, they set aside the Assessment of Costs and the Order of Abatement was not appealed. It was the Assessment of Costs which was different in the Building Code and unclear and it was a different type of Appeal.

David Behr, represented the owner, said he heard two different messages from the Board that one unit was not illegal and the other was illegal and it was a sticking point to try to get these violations corrected. There were violations in the larger building which the owner had attempted to correct. He stated he never aborted a permit that was issued and it was his desire to fix the violations that the Department identified and required to do so. He took out a permit and the Department announced he aborted the permit and yet in his file he did not see any act by him by which he said he hereby abort to attempt to fix the violations.

The record showed there was a meeting of the Board of Representatives which discussed on the global resolution of everything. As the record stated, after reviewing the documentation, Chief Inspector Bosque approved their removal of the 9x penalty and the permit application requested to recognize their residential accessory was approved. They may have a misunderstanding that the owner did want to fix the violations, took out a permit, paid for it and attempted to comply with all the other requests and yet in his files was no mention about an aborted, discarded or abandoned attempt to fix. They would like a confirmation from this panel that any previous declaration by the Board was illegal be reversed and reversed the declaration that the owner had abandoned or aborted his permit and the owner be permitted to resume the work under the conditions of this agreement shown on the record about a year ago.

Richard Thomas, Appellant, said Chief Inspector Bosque showed the Board a part of the wall in the unit 1265 Girard and it was rented for \$1,800 a month for the last 5 years to three different tenants that were subsidized by HUD, Section 8. He had proof today and can assure them the inspections had been made every year and that it was a very nice habitable dwelling. It went back to the 1800s, and it had beautiful pine floors and very high ceilings. The alleged commercial space next door was a church and in the commercial space for 50 years. He bought the building 37 years ago and wanted to save the church.

He distributed pictures to the Board taken on the other side of the wall and the Department said the wall had an opening. It may have a case opening but it was never used. The City knew that when viewed from the bottom stairs from the church that led to a toilet room but they believed the stairs went up here and there were a set of moldings. They needed to determine if it was once connected at one time but there was no mention about the water supply pipe that went 35

feet from the church's kitchen to a toilet and a sink, which was higher than the entrance to the door.

In the Board's packet, a letter from the current reverend of the church stated there was no contact from anyone in the unit that alleged to be next door but it had a different height of four feet higher than the level of the commercial space in front. The declaration and the pictures indicated existing construction in the 1900s of a toilet room with a small stairway that led up there. On the first page showed both side of the stairs and a little handrail that the church made a modest wall here but they overlooked the fact that the commercial space needed a toilet which was the total commercial space.

The City was unwilling to give this as a standalone unit because of the fake 2x7 wall with moldings around it which they had not intended to have a door there. The height was 6 x 6 and had a very low casing to have anything there. When he purchased the building 37 years ago, they have documentation from the Assessor's Office that clearly showed there was one flat, 3 apartments and 4 units. The flat was at 3558 San Bruno Avenue, the two units at 3562 San Bruno Avenue and a third unit on the backside of the building was 165 Girard. Mr. Behr will explain the backside of the building was the same level of San Bernardino Avenue several years ago.

At some point, the City raised the height of the street and Girard was higher which took the backside of the building that required the street about 9 feet higher and made the entrance to this building the City created was much of cobblestones and required 5 or 6 flight of stairs to the entrance of 565 Girard. They distributed packets with photographs yesterday to the Building Department of this beautiful building. On the backside was Girard Avenue which was unusual because the two-story building were no longer a two-story building when part of it was removed by building up a wall where there were steps to the entrance to the unit. It was built by the City during the 10s, 30s and 40s period and there was nothing wrong with that.

Mr. Buscovich said it was built with stuff they had laid around because no one needed cobblestone streets anymore. It was relatively narrow but it was up to Federal code. Although the Building Department never said it was narrow, it was too narrow to have a garbage can in that space. The City built part of that wall which collapsed years ago and had fallen on him and his tenant. He temporarily shored it in 7 days and placed the tenants in a hotel. It took 2 ½ years to get the building permit to permanently fix the City's wall which cost him \$30,000 since he did not want to lose his units. On the last page, there was approximately 18 foot repair of the wall with a brand new retaining wall that was replaced and made it slightly larger to accommodate a garbage can and made the tenants very happy.

He was upset when he heard that he aborted the permit when in fact, he wanted to do exactly what Mr. Buscovich and Chief Inspector Bosque had agreed to make it a legal unit and there were no reason not to. It was untrue that this was an accessory unit and he had names of tenants from 1958 to 1964 and none were associated with the bicycle shop that existed before the church and a welding shop. When the church took over, they agreed to waive the cost and 9x fees. He requested to waive the 9x fees and all the problems in acquiring the permits because they said he had an illegal unit which was untrue.

President Clinch said this was combined time and the Department had 6 minutes for rebuttal.

Chief Inspector Bosque said the document the Board reviewed was a card from the Assessors' Office and they used that for the history of the property when the permit history showed something else and this did not establish a legal use but for information only. Again, they were in a situation where the building permit history did not reflect this and they needed to file a building permit to establish as a stand-alone unit. His agent agreed and filed a permit, the Department signed off and not went through the process before he aborted it. The previous permit history did not show this permit and he needed a building permit for the record otherwise Planning will have an issue. The Housing Division had approved the permit and he aborted it. The Assessment of Costs was set aside and he was not charged.

They made some progress but what he appealed also was the Assessment of Costs of all the other open cases that dealt with heat, hot water, etc. They disagreed to waive the fees because time was validly spent by the City which he should be charged for that. He talked about that particular wall because he did not file a proper permit or plan, etc. It was not the City's fault it took so long and that was on his part. The issue of the illegal unit was actually a red herring and really not the issue but it was everything else. If he would like, she would be more than happy to send him a letter explaining that particular CTS number that they were not assessing the Assessment of Costs up to this point in time but he needed to get the building permit to get that recognized within the permit history.

He had not given her any specifics after that meeting and disagreed to waive everything because of the time spent on his outstanding cases. The illegal unit was not the issue and he filed the building permit and needed to get that legalize. What happened with Planning was something he needed to research but they had sent him forward in that process with an approval based on the record that was shown to them. This did not mean legality and they had a lot of time disparate from what the building permit history indicated and this was an observation made by the Assessor's at the time.

If you look at everything from the Assessor's, they have stamped with a disclaimer that stated they see this and will charge but it did not mean it was put in with a permit and this was the City's policy and not other jurisdiction and it was the City and County of San Francisco. Mr. Buscovich gave them some data and they were able to approve the permit but he needed to follow up on the process.

The issue before the Board was the Assessment of Costs and he was not exposed with respect to the illegal unit. The CTS number on the Notice of Violation #201127401, Appeal #6774, was the illegal unit issue and the Appeal #6772 on other building issues. There were several violations outstanding and Senior Housing Inspector Karcs will give more details if any work or permits were pulled on the other violations and to clarify the life-safety issues and others, as he was at the site more than one occasion.

Andy Karcs, Senior Housing Inspector, said in regards to this Appeal #6774 on the illegal unit in question. He clarified there was no Order of Abatement on that complaint number and as Chief

Inspector Bosque explained the Assessment of Costs had been set aside. In regards to Appeal #6772 that encompassed the other residential units and there were a list of violations on replacement of windows which he had filed a permit but no work were done. The hot water heaters were replaced without the proper plumbing permit. He had filed permits, some were corrected and some had not. There were other violations that required correction on heating sources and had permits that were remediated and violations regarding rodents, etc. On Appeal #6772 with the Order of Abatement, it did not include the violations related to the 4th unit on the Girard apartment and Appeal #6774 was totally separate. There were some life-safety hazards and issues regarding windows falling out, etc.

Commissioner Melgar said she was confused and wondered why they needed to discuss Appeal #6774 if there was no Order of Abatement. Attorney Clark understood that it was a request for jurisdiction on the Board's decision to waive the Assessment of Costs.

Chief Inspector Bosque said in the application for both of these Agenda items, the Appellant listed several CTS numbers that each particular open case had Assessment of Costs. For the illegal unit, they had waived that but the Appellant included the other open cases in his Appeal. He appealed the Assessment of Costs of all the open cases on both properties which was the reason this discussion on the illegal unit was actually misleading. He wanted all the costs waived on the Assessment of Costs on all the open cases on both these side by side properties which was inappropriate and they tried to work with him and waived the Assessment of Costs on the permit associated with the illegal unit on Girard Street.

Commissioner Melgar asked if it was separated and he appealed everything together, they were not dealing with the case without an Abatement Order and the costs associated?

Chief Inspector Bosque said there may be some confusion that, about two years ago, the Building Code was changed so that the Assessment of Costs is no longer linked to the issuance of an Order. The Assessment of Costs accrued when the timeframe for compliance on the Notice of Violation occurred and they had not complied. It was different 3 or 4 years ago and what he faced here was the ambiguity in the Building Code. He wanted the Board to waive all his Assessment of Costs and it was not for appealing the issuance of Order in 15 days. He also had two more in-house Hearings with them before they send it to the Board. If they lien the property for the unpaid Assessment of Costs, they had a Hearing before the Board of Supervisors and that was part of the lien process associated with the Assessment of Costs.

Chief Bosque characterized an aborted permit in this situation as an over-the-counter permit and started the process by taking it from station-to-station and had the permit filed but he did not continue to the next station. On July 30th, his agent filed a permit on his behalf and at that point he aborted the process and not followed through review by other stations within the process which he needed to do. Deputy Director Sweeney can talk more about that process because they had that conversation.

Deputy Director Sweeney recalled Mr. Thomas came to the Department at intake to get a number to start the process. The clerks would check the permit for accuracy on the address, block, lot number and the information was properly filled out. They would direct him to across the hall for

plan check review. According to their records, Mr. Thomas did not continue the process but took the permit and walked out and it was a filed status.

Commissioner Walker asked if this was a hearing to take jurisdiction back on a process filed too late for the hearings or a hearing on an Order of Abatement described by his attorney that there had to be some criteria for them to allow that. The illegal unit was still up for any process the owner wanted to do about that. They did not have jurisdiction on that and there was no action at this point it had been taken. On the other case, there were Notice of Violations not cured and there was proper noticing and process for that. It went through an Order of Abatement and there was no legal reason to pull jurisdiction on that which was the real issue.

Commissioner McCarthy said no one had a chance to review the lawsuit until today. The lawsuit obviously reflected Cases #6772 and #6774 which concerned him. He would continue this until they were more confident about a direction. He concurred with a lot of the statements made and would prefer more time to read through this to avoid mistakes to separate in this forum and did not want to regret their decision. They were not clear on the dollar amount and what was negotiated. If the Department agreed, he proposed a continuance on this item and that the Board not take a position and revisit this at another hearing date until he was more educated.

Chief Inspector Bosque said absolutely and part of the confusion was on the Building Code which was ambiguous on the filing an Appeal within 15 days if appealing an Order of Abatement. It was also unclear on the timely filing when you come before the AAB to contest the imposition of the Assessment of Costs, as it no longer linked when the code changed and modified by the previous Director. When it happened, the Director understood it would ultimately go to the Board of Supervisors and there was a language that led them to believe he would come to the Board regarding the Assessment of Costs. She would structure a table or something on the basis of the questions today which might be more helpful to him for another meeting.

Commissioner McCarthy said maybe the table can help identify those issues and the Department and owner may concur and would have this up front in the next hearing. They would at least have a structure to approach this and not make a blanket decision. Chief Inspector Bosque said the staff was concerned the Appeal was difficult to understand because it was so convoluted and perhaps the Appellant and his attorney can clarify for them. When those documents were read, it was elaborate and difficult to decipher what exactly was being appealed and later determined he appealed all the Assessment of Costs. They could clarify for them within the next 30 days which would be very helpful for them to respond appropriately.

Vice President Melgar wanted time and clarification on both their actions, the lawsuit and what they needed to do. In putting herself in the owner's shoes, she was afraid to move certain things for fear on the loss of her property value because of the legality issue. When a property was currently on the market, they required the 3-R report which the agent would check the Assessor's Office record and not from DBI record as it was not currently available online. They reviewed that when someone bought a property and it was the same way today. She was unsure and had a lot of questions when placed in his situation in following this course of action versus the others and not meant she accepted or the other. Chief Inspector Bosque said they would be happy to

provide the historical 3-R report the seller required to give to buyer which clearly showed three units and a commercial, including the historical record.

Commissioner McCarthy said it was more of a clarification issue. If it came back to them, everybody would be able to make public comment again or just the Appellant? Attorney Clark said if it was before the Board, they were required to give the opportunity for public comment. There were a lot of things filed last night which she tried to get through but there was confusion that everyone experienced. She clarified on Item #6772, there was an Order of Abatement and time had expired. She asked if Commissioner McCarthy wanted to continue the other matter but uphold the Order of Abatement because he viewed them as linked.

Commissioner McCarthy said based on the presentation today, he cannot separate them but wanted more time to re-evaluate the case and for staff's estimation on cost to the owner in order to make a more educated decision. He was afraid to make a decision on this item because he did not know what may affect the property later on. Attorney Clark said she did not say it was inappropriate but wanted clarification on what he proposed. Deputy Director Sweeny requested the property owner to provide the water hookup order. He believed this building was built prior to 1906 and had accurate record to review the legality of the unit was the water hookup. It will tell you how many units, commercial, toilets and water closets and it was fairly accurate.

President Clinch asked the Appellant for rebuttal.

Commissioner McCray said in review of the lawsuit filed May 14th, was there any response to this from the City Attorney and the Board? Attorney Clark said she did not know and this came to her office at 5:30 p.m. last night and she reviewed it quickly but had no idea or chance to review it completely.

Commissioner McCray said this was a brief to the Board and related to the illegal unit on Item #6774. The Item #6772 had the abatement notification on it and the other was just in discussion to determine if it was legal or not. He can separate and viewed the Items #6772 and #6774 as separate matters. Although Commissioner McCarthy viewed them linked, he would separate them. Commissioner McCarthy said he saw it specifically linked together because of what was presented today and would rather see them separated and return individually to have a clarification on the cost that accrued with more information and wanted continuance before he made his decision. However, if the votes were not here, he would be fine with that, too.

Commissioner Walker clarified there was no lawsuit filed but a brief to this Hearing. The confusion was they put them both together and agreed with the Commissioners these were two separate issues. On Item #6772, there clearly was a Code Enforcement issue subsequent Abatement Order issued on violations not cured. She would not take jurisdiction on that as there was no reason to. The Item #6774 was still active in their Department not having a Director's Hearings other than a violation it was an illegal unit that had not been cured. They should not hold jurisdiction on either and have him go through the process of legalizing the illegal unit and the Department to resolve that. She did not know why they needed more time but she personally did not.

President Clinch asked to hear from the Appellant.

Richard Thomas, Appellant, apologized Mr. Buscovich had not represented him before it went before the Board of Supervisors. He backed off after he paid him \$15,000, particularly after Mr. Buscovich claimed he had a deal with Chief Inspector Bosque. He heard he can combine all this on one permit and gave Mr. Buscovich a blank check to make that deal. They did that because he was never successful in obtaining a permit and tried more than ten times on individual things because the Department record indicated he had an illegal situation he needed to clear and it took 2 1/2 years to obtain a permit.

He showed a permit that he wanted to protest because he paid \$3,000 to obtain a permit to do a small job. The work cost \$2,000 and he paid \$3,000 for work that he can pay for two because the 9x fee of \$2,317 had been penalized on something he did not do. They decided that maybe he put those aluminum windows in and maybe he did that. He had open permits he pulled and will expire on July 31st. Before going to the Board of Supervisors, he paid a lot of money to keep these things active and had opportunity to come before a Board to adjust the 9x penalty that was reasonable.

He had invited Mr. Buscovich to give him some direction but it was never his intention to abort anything. He applied for a building permit and the Building Department cancelled and revoked the permit to build a set of stairs. After the final completion a month ago, he cannot believe what happened and wanted to know why. The reason they revoked it was because he had a 3-unit building and his permit was for a 4-unit building. He thought it was resolved when the paperwork received from Mr. Buscovich and Chief Inspector Bosque showed that this will be a legal unit, etc., and maybe someone did not get the memo but he still needed permits to resolve things and wanted help from the Board.

Attorney Clark clarified that when Commissioner McCarthy referred to a lawsuit, she had not realized it was a brief and assumed it was a Code Enforcement Section and wanted to make sure but had not seen it and read the briefs.

Deputy Director Sweeney said there was a clear cut system to establish unit verification count. The Appellant could go to the 4th floor and apply for a 3-R report. When and if the 3-R report came out to 3 residential units, he could appeal that and he would be told what documents to get and meet with a member of staff on the 3rd floor. A member of staff would determine how many units and if they agreed there was evidence of a 4-unit he could proceed. He would be directed to get an administrative permit and go to Planning Department and that was how the process worked and he will get a clear cut answer through administrative process of how many units there were.

Chief Inspector Bosque said that was exactly what the Appellant did. He had Mr. Buscovich file the permit to do that and it was in his testimony.

Commissioner McCarthy made a motion, seconded by Vice-President Melgar, to continue this item for one month if that was the full decision of the Commission and to vote and separate the two issues.

Commissioner McCray asked what was to happen in a month?

Commissioner Mar added a friendly amendment to that motion and was concerned about those outstanding NOVs. In the units not related to the questionable illegal unit and the occupied units, he wanted to see in 30 days if they gave him the extension especially for those life-safety violations on the window permit if that was one of them and the water heater if that was another issue. If those things can be addressed in 30 days when they return with more clarifications, he would feel more comfortable with that.

President Clinch said the motion on the floor was to postpone this but within a month. Commissioner Lee said to help answer Commissioner McCray's question what will happen next month, he asked staff to actually delineate between the two Appeal cases, tell them exactly what was being appealed in one case and what was being appealed on the other, the violation associated with it and at the same time explain it to the Appellant.

Chief Inspector Bosque said she needed the assistance of the Appellant to do that. On their staff report, the Appeal applications were so convoluted that it was difficult to know what he actually appealed besides from all the Assessment of Costs. If she could get more clarification, she would provide that and perhaps his attorney can assist him further because it was very difficult for them to look at these Appeal applications and wondered what he asked for.

Mr. Behr, as counsel for the Appellant, said they will certainly cooperate with the Department to clarify all the issues that the Commissioners had raised this morning. Attorney Clark said if this was a request for jurisdiction, the Appellant should be directed to Building Code Section 77.5 to make a showing for why there was a delay in filing the Appeal as was required. She was not taking a position of whether or not the Board can grant the continuance but if they did, that was the issue before them with respect to where there was an Order of Abatement and time had expired for filing the Appeal. They needed to prove it was the fault of the City that they were delayed in filing.

Commission Secretary Harris said there was a motion for a continuance on both Cases #6772 and #6774 to the next Hearing of the Abatement Appeals Board.

Commission Secretary Harris made a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>No</i>
<i>Commissioner Walker</i>	<i>No</i>

The motion carried 5 to 2.

Commission Secretary Harris apologized they forgot to ask for public comment and will redo the roll call votes later.

Mr. Gerald Green, tenant of the apartment at 3358 San Bruno Avenue, said he lived there since 2009. He had misery over windows with lead paint and among the disabled, handicapped, bedridden and the entire building was this HIV victim and a person who was sick. There were no followed-up on plans of repairing these windows and they literally froze to death last night. He was here today because a woman cried on his shoulder and it was horrible. No efforts were made to resolve the situation so they went to the Rent Board for help but they had not responded. It was unfair and there were windows falling out.

There were two stroke victims and it was horrible. He had a notice from Mr. Mak and his supervisor that the windows were ordered and taken advantage of the situation. It was not only his windows but the entire building. He showed what was done to improve these windows with just a coat of paint on these windows. He disagreed with the 30 days because there was so much paperwork and wiring problems. There was also the fuse situation which he received a notice from PG&E. He was upset they placed a rent sign in the building and painted it over rotten wood. He cannot find help and was very upset then gave up and stayed with his attorney. He will show how they were discriminated and he was very upset with the entire plans because he had to live with a person who was sick.

Commissioner Lee clarified that, while this request for jurisdiction was pending, the status of the Order of Abatement was in full effect. Chief Housing Inspector Bosque said on the notices were in full force and in effect. The staff referred this case to the City Attorney's for reasons they have heard and it had taken a great amount of time to correct the violations and everything was opened and still moving forward.

Commission Secretary Harris said there was a motion for a continuance for 30 days until the next Hearing of the Abatement Appeals Board.

Commissioner Secretary Harris called a roll call vote again on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>No</i>
<i>Commissioner Walker</i>	<i>No</i>

The motion carried 5 to 2.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment.

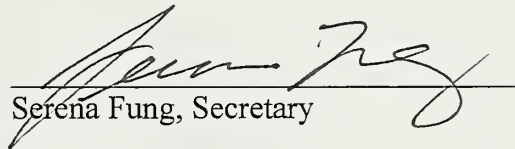
G. ADJOURNMENT

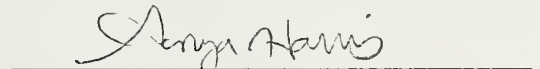
Commissioner Walker made a motion, seconded by President Clinch, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 11:44 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary


ABATEMENT APPEALS BOARD
NOTICE OF MEETING
Wednesday, June 19, 2013 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
Aired Live on SFGTV Channel 78

 GOVERNMENT
DOCUMENTS DEPT

JUN 14 2013

AGENDA:

 SAN FRANCISCO
PUBLIC LIBRARY

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on April 17, 2013.

D. NEW APPEALS: Order of Abatement(s).
1. CASE NO. 6778: 326-330 Presidio Avenue

Owner of Record and Appellant: Brendan A. Quinlan, 63 Wawona Street, San Francisco, CA 94127

Owner of Record and Appellant: Elizabeth Quinlan, 63 Wawona Street, San Francisco, CA 94127

ACTION REQUESTED BY APPELLANT: The appellant is requesting the AAB's assistance in securing the tenant's cooperation to complete the necessary repairs.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272
Myrna Melgar, Vice President	Sonya Harris, BIC Secretary (415) 558-6164
Frank Lee, Commissioner	Teresita Sulit, Recording Secretary (415) 558-6267

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney (415) 554-4634

E. CONTINUED APPEALS: Request for Jurisdiction:

- 1. CASE NO. 6772: 3558 San Bruno Avenue, 3562 San Bruno Ave., #1 & #2, and 3580 San Bruno Ave., #1 to #4**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting that the AAB grant jurisdiction.

- 2. CASE NO. 6774: 3556-64 San Bruno Avenue AKA 1265 Girard Street**

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The appellant is requesting that the AAB grant jurisdiction.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

p:aab\agenda\6-19-13.ts

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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ACCESSIBLE MEETING INFORMATION POLICY

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FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

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ABATEMENT APPEALS BOARD

Wednesday, June 19, 2013 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED October 16, 2013

**GOVERNMENT
DOCUMENTS DEPT**

OCT 21 2013

MINUTES

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A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, June 19, 2013 was called to order at 9:12 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President
Myrna Melgar, Vice-President (Arrived 9:27 a.m.)
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner
Debra Walker, Commissioner
Dr. James McCray, Jr., Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
John Hinchion, Acting Senior Building Inspector, Code Enforcement Division
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on April 17, 2013.

Commissioner McCray made a motion, seconded by President Clinch, to approve the minutes of April 17, 2013.

Commission Secretary Harris asked for public comment on the minutes and there was none. The minutes were approved.

The motion carried unanimously.

D. NEW APPEALS: Order of Abatement(s)

1. CASE NO. 6778: 326-330 Presidio Avenue

Owner of Record and Appellant: Brendan A. Quinlan, 63 Wawona Street,
San Francisco, CA 94127

Owner of Record and Appellant: Elizabeth Quinlan, 63 Wawona Street,
San Francisco, CA 94127

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the AAB's assistance in receiving cooperation with the tenant to complete the necessary repairs.

NOTICE OF DECISION: At the request of the Appellant, the AAB continued the matter. Accordingly, the continued hearing will be held on **August 21, 2013** at 9:00 a.m., City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416. You may submit additional documents and information that may support your appeal, if so, please submit 15 sets by August 5, 2013. You are required to appear personally. Failure to be represented may constitute a denial of this appeal. If you wish, you may be represented by counsel of your choice and/or bring witnesses to provide testimony.

Commission Secretary Harris said she received an announcement that there was going to be a continuance of Item D, 326-330 Presidio Avenue and the case would not be heard today.

E. CONTINUED APPEALS: Order of Abatements

1. CASE NO. 6772: 3558 San Bruno Avenue, 3562 San Bruno Ave., #1 & #2, and 3580 San Bruno Ave., #1 to #4

Owner of Record and Appellant: Richard Thomas, Environment & Land Management,
P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting that the AAB grant jurisdiction.

NOTICE OF DECISION: Under Chapter 77 of the San Francisco Administrative Code, the AAB “may grant jurisdiction for an Appeal filed beyond the 15-day appeal period only upon a showing by the Appellant that the delay in filing the appeal was due to misrepresentation, mistake, or other error on the part of the City” (S.F. Admin. Code, Chapter 77.5(b)(2)). After deliberation of the evidence submitted, the AAB voted to deny

the Request for Jurisdiction based on the finding that the requestor failed to demonstrate that his late filing of the appeal beyond the 15-day appeal period was due to misrepresentation, mistake or other error *on the part of the City*. Accordingly, the AAB concluded there was no legal basis to grant late jurisdiction in this case.

President Clinch announced that since these cases were previously heard, the Appellant and the Department would have three minutes to present their case. The Department would speak first followed by the Appellant.

Chief Inspector Bosque said these items were taken individually and not combined in case #6772. The Commissioners asked for a detailed table, Exhibit A, which was given to them today in the back of the staff report. As a convenience, they updated the staff report needed to make their decision and strongly urged the Board that the Appellant gave the proper information for their jurisdiction of this case and marred their ability in both Agenda Items #1 and #2 but they were two separate properties. At the last meeting, the Board asked for better clarification on the applications which was unclear and appeared linked to both properties. There was no clarification from the property owner but he wanted to appeal the Assessment of Costs.

Chief Inspector Bosque said Exhibit A, Case #6772, clearly showed how many Orders of Abatement were assessed on each case and identified 9 complaints when an Order of Abatement was issued.

President Clinch asked if there were any other questions?

Mr. David Barry, for the owner and Environment Land Management. Since the last Hearing, as described in the declaration of Thomas, Environment Land Management, he hired an attorney for a substantial time to clear the violations. Lisa Banales met with Senior Housing Inspector Andrew Karcs and went thoroughly each violation and determined the steps required to comply with each violation. The property management for ELM, Diane Calhoun, was authorized to assist with all the violations and obtained all the required permits.

Mr. Thomas' intention was to comply with the violations and he spoke with a plumber yesterday for an estimate and inspection of the property. The Department was very cooperative and explained the required steps to clear these violations. The various penalties they appealed from were negotiable or open for discussion when the violations were cleared. He met with Mr. Sweeney this morning and made comments from the last session on precise steps to recognize Girard Street and made some extent to moot some of the assessment penalties in Appeal #6772.

They were confused and had difficulty as illustrated by some of the exhibits in the packet and he showed them separately for their examination what they were. On one of the items involved in the Appeal was called violation 421 because those were the last three digits of the complaint number which involved the stairs at the subject property in March 20, 2011. The building owner took the steps to fix that by getting a building permit and on July, 2012 paid a penalty \$2,300.

The work was approved and cleared in January, 2013, and received a Certificate of Final Completion. This permit approval was revoked two months later which meant penalties will

continue to accumulate although the work was done and approved because the Girard unit was on Appeal. It was not recognized as a legal unit and contrary to PG&E the gas has been turned on since 1915 and has always been legal.

President Clinch asked if there was any public comment.

Mr. Gerald Green asked if this was concurrent with 3580 San Bruno? President Clinch said Case #6772 was the units with all the violations.

Mr. Green said this activity went on for four years and there were damaged windows with disabled people living there. Mr. Thomas had a proceeding and gave the rent Board some papers. Mr. Thomas initially fixed these windows without a permit and what he perceived as fixing the problem was applying a hinge on the window. He was concerned that the Board gave Mr. Thomas 30 days and nothing happened. He wondered if he had a permit for the windows? There was a disabled person who suffered for four years. He felt time had been wasted and he lived in the property with a disabled person with a horrible condition. He had someone here to speak on behalf of the disabled and seniors.

Mr. Tony Robles said that he worked with the Senior & Disability Action and their organization served seniors and people with disabilities. Their primary concern among other things was housing and worked to ensure that elders can age in place and health and housing issues. They worked to make sure living conditions in SRO hotels were improved and worked to get an ordinance passed through DBI to ensure that grab bars and working phone jacks were installed in SRO hotels or residences. He spoke with Mr. Green and Ms. Brown who lived at San Bruno Avenue. There were many habitability issues, leaks and problems with the windows. The windows were bolted down and would prevent fire safety or emergency accessibility for the Fire Department.

Mr. Robles said that Ms. Brown who resides there has some very significant health issues. She is a disabled elder who is trying to age in place. She had a care provider, but her health problems on the habitability issues in the residence complicated the matter. The temperature was either extremely cold or extremely hot: The moisture came through various leaks, leaky refrigerator, windows that cannot open and wiring problems as well. There have been ongoing problems with the property management company that owns this and other properties.

Mr. Robles stated that there was a seven-page Bay Guardian article about this ongoing problem with this particular management ownership company. He believed there were about 300 cases that went to litigation over the last 10 years or. It was nothing new and it was a huge problem in San Francisco, particularly problems with elders in a population that is aging. They wanted to ensure these mechanisms were properly functioning correctly for the elders to age in place, and make it conducive to habitability and healthy living.

President Clinch asked if there was any further public comment, and there was none.

Commissioner Walker made a motion, seconded by Vice President Melgar, that there was no argument for taking jurisdiction back on this issue and moved to deny the request for jurisdiction.

Attorney Clark said before they voted, she wanted to clarify that Commissioner Walker's finding was the Appellant failed to show that his lateness in filing his jurisdiction request was due to a misrepresentation or error on the part of the City.

Commissioner Walker said exactly and that was the information she was looking for, some legal reason for them to take back jurisdiction on a case they have no jurisdiction over, and there was nothing presented that gave them legal reason to do that. Staff issued the Notices of Violation and notified them ongoing about all the different ones. It is great that there was some action and a willingness to try to resolve these issues prior to the Hearing, and she encouraged that to go forward but the Board did not have jurisdiction over this case and there was no argument presented.

Commissioner Lee said there were 9 Orders of Abatement assessed against these two properties and all assessed over 4 months and over 11 months ago. It was not like one single Order of Abatement that was assessed and was appealed to them. He felt they knew what the Order of Abatements were and should have seen at least one of the 9 Orders of Abatement and read through the Rules of Appeal and if they did not, somebody missed out on it.

Commissioner Mar said he would agree. By the Appellant's own admission, he had a third party representing him at this time. Unfortunately the third party did not follow the matter in a timely matter. If you hired someone to represent you, they were representing you until it changed.

Commission Secretary Harris said there was a roll call vote on the motion to deny the request for jurisdiction.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice-President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried unanimously.

2. CASE NO. 6774: 3556-64 San Bruno Avenue, aka 1265 Girard Street

Owner of Record and Appellant: Richard Thomas, Environment & Land Management, P.O. Box 877, San Francisco, CA 94577

ACTION REQUESTED BY APPELLANT: The Appellant is requesting that the AAB grant jurisdiction.

NOTICE OF DECISION: Pursuant to Chapter 77 of the San Francisco Administrative Code, the AAB “may grant jurisdiction for an appeal filed beyond the 15-day appeal period only upon a showing by the Appellant that the delay in filing the appeal was due to misrepresentation, mistake, or other error on the part of the City.” (S.F. Admin. Code, Chapter 77.5(b)(2).) After deliberation of the evidence submitted, the AAB voted to deny the Request for Jurisdiction based on the finding that the requestor failed to demonstrate that his late filing of the Appeal beyond the 15-day appeal period was due to misrepresentation, mistake or other error *on the part of the City*. Accordingly, the AAB concluded there was no legal basis to grant late jurisdiction in this case. Further, the AAB concluded that it lacked jurisdiction over the matter because no Order of Abatement had been issued for the subject property (S.F. Building Code, 105A.2.3).

President Clinch said the case was a continuance and the parties each had 3 minutes.

Chief Inspector Bosque said the staff position was the same as the previous case but did not believe the property owner had given them any information that would warrant them to take jurisdiction and strongly requested the Board not to grant jurisdiction on this case.

Commissioner Lee wanted clarification if there were Orders of Abatement issued on this item? Chief Inspector Bosque said there was no Order of Abatement issued in respect to the legal use.

Mr. David Barry said his prior comments should apply equally to this. Attorney Clark said his client had three minutes to speak.

Mr. Thomas said when he found this notice, he showed good cause and was penalized by allegedly having this phantom unit among the one building in question and that building was at 3556 through 3564 San Bruno Avenue. It was that old building that they had a handout that was part of the Sanborn Map that showed the building was in existence in 1919. Upon reviewing the record himself, he found the electrical company showed it was hooked up to gas service in 1915 which was the phantom unit. It was because of this phantom unit that all of the other things that were found in the building next door and some of those things were the aluminum windows that he did not put in.

Mr. Thomas owned the building for 37 years and had not installed aluminum windows. It was installed by the previous owner when one of the old windows blew out. The old windows had a characteristic pattern that the Planning Commission and their interest wanted to maintain that appearance on the windows. They were perfectly happy to do that, however, about two years ago the Department denied his permits because of the illegal unit and it was in a different building or area. He was told to take care of this illegal unit before he could do anything.

When he met with Chief Inspector Bosque about 1 ½ years ago, she had this list of violations. There was an initial Assessment of Cost and the legalization of this property because he maintained it was legal and it was not. He was fined \$2,200 and cannot remove it because of the violation. He paid \$20,000 with the fees and 9X cost but had a building permit to fix the windows. He could not get into the tenant’s unit because the last time he was there the police came and arrested him for trespassing.

President Clinch asked for public comment or questions from the Commission.

Commissioner Walker said there had not been an Order of Abatement issued and the Board lacked jurisdiction. She believed the Department should deal with these violations and the property owner to deal with their inspectors. She would support a motion unless somebody else wanted to make it.

Vice President Melgar said when this item came before them last month, the paperwork was filed by the Appellant's attorney, prior to that their Attorney Clark did not have enough time to review and gave them thorough analysis of the issues involved but they had a month and reviewed everything and felt pretty confident she had done her due diligence and would not grant the jurisdiction. The owner certainly had some issues that he thought he knew some factual things the City did not agree with, but she did not believe it was their place to resolve these issues. Also, it was a different issue in terms of the many code violations that existed in this building.

Commissioner McCarthy said he concurred with Commissioner Melgar's comments and the Board had done their due diligence.

Commissioner Walker made a motion, seconded by Commissioner Mar, to deny the request for jurisdiction based on all of the facts there had been nothing presented which gave them any argument to take jurisdiction of this case.

Secretary Harris said there was a motion and a second to deny the request for jurisdiction and called for a roll call vote on this item.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice-President Melgar</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried unanimously.

There was no public comment.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items not on the Abatement Appeals Board Agenda.

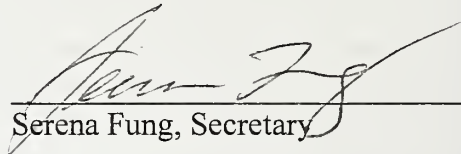
G. ADJOURNMENT

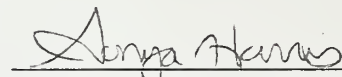
President Clinch made a motion, seconded by Commissioner Walker, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 9:40 a.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, August 21, 2013 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on May 15, 2013.

08-15-13P03:52 RCVD

D. NEW APPEALS: Order of Abatement(s).

1. CASE NO. 6779: 3580 San Bruno Avenue

GOVERNMENT
DOCUMENTS DEPT

Owner of Record and Appellant: Richard E. Thomas, P.O. Box 877,
San Leandro, CA 94577

AUG 15 2013

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ACTION REQUESTED BY APPELLANT: The Appellant stated the Electrical Contractor claimed to him that the work was a minor correction.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD

Kevin Clinch, President

Myrna Melgar, Vice President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

DEPARTMENT REPRESENTATIVES

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Sonya Harris, BIC Secretary

Teresita Sulit, Recording Secretary

(415) 558-6164

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CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney

(415) 554-4634

E. CONTINUED APPEAL: Order of Abatement(s).

1. CASE NO. 6778: 326-330 Presidio Avenue

Owner of Record and Appellant: Brendan A. Quinlan, 63 Wawona Street,
San Francisco, CA 94127

Owner of Record and Appellant: Elizabeth Quinlan, 63 Wawona Street,
San Francisco, CA 94127

ACTION REQUESTED BY APPELLANT: The appellant is requesting the AAB's assistance in securing the tenant's cooperation to complete the necessary repairs.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

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G. ADJOURNMENT

p:aab\agenda\8-21-13.ts

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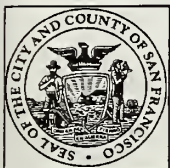
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ABATEMENT APPEALS BOARD

Wednesday, August 21, 2013 at 9:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED November 20, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, August 21, 2013 was called to order at 9:07 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President

Myrna Melgar, Vice-President

Frank Lee, Commissioner

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Debra Walker, Commissioner

Dr. James McCray, Jr., Commissioner

Sonya Harris, Building Inspection Commission Secretary

GOVERNMENT
DOCUMENTS DEPT

NOV 27 2013

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D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

Tony Grieco, Chief Building Inspector

Patrick McKenzie, Senior Housing Inspector

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on May 15, 2013.

Vice President Melgar made a motion, seconded by Commissioner Walker, to approve the minutes of May 15, 2013.

The motion carried unanimously.

Commission Secretary Harris asked for public comment on the minutes and there was none. The minutes were approved.

D. NEW APPEALS: Order of Abatement(s)

1. CASE NO. 6779: 3580 San Bruno Avenue

Owner of Record and Appellant: Richard E. Thomas, P. O. Box 877, San Leandro, CA 94577

Owner of Record and Appellant: Elizabeth Quinlan, 63 Wawona Street, San Francisco, CA 94127

ACTION REQUESTED BY APPELLANT: The Appellant stated the Electrical Contractor claimed to him that the work was a minor correction.

NOTICE OF DECISION: The Appeal was withdrawn by the Appellant on August 19, 2013.

Commission Secretary Harris announced that Item D, for a new Appeal Case Number 6779, 3580 San Bruno Avenue had been withdrawn and the case would not be heard today.

E. CONTINUED APPEALS: Order of Abatements

1. CASE NO. 6778: 326-330 Presidio Avenue

Owner of Record and Appellant: Brendan A. and Elizabeth Quinlan, 63 Wawona Street, San Francisco, CA 94127

ACTION REQUESTED BY APPELLANT: The Appellant is requesting the AAB's assistance in securing the tenant's cooperation to complete the necessary repairs.

NOTICE OF DECISION: The AAB heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection (DBI), the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decision: (1) The conditions at the property are as described in the Notice of Violation; (2) The Order of Abatement is modified to allow the property owner 60 days to complete the necessary work; and (3) The owner shall reimburse DBI for the Assessment of Costs incurred up to and including the date of the Hearing but shall not be required to reimburse DBI for any Assessment of Costs incurred after the date of the Hearing.

Commission Secretary Harris said this was testimony, deliberation and possible action to uphold or modify the Order of Abatement.

Patrick McKenzie, Senior Housing Inspector represented Chief Housing Inspector Rosemary Bosque who was not able to be present. He gave a quick synopsis of the case and said the staff report had all pertinent information regarding the case. The property at 326-330 Presidio Avenue is a 6-unit apartment building. The Housing Inspection Services received a complaint on October 8, 2009 on the same day they inspected the property and found the violations of the San Francisco Housing Code and issued a Notice of Violation on maintenance repairs and peeling paint.

Over the course of the complaint, the owner and the tenant were allowed to work out accessibility to the unit to conduct the repairs and prior to the Notice of Violation has remained outstanding and a Director's Hearing was scheduled and the Order of Abasement was issued against the property for work that was not done. It appeared to the Department the owner was willing to do the work and HIS will abide by the Board's decision. Their recommendation was to uphold the Order of Abatement.

Commission Secretary Harris said the Department and the Appellant each had 7 minutes, and three minutes each for rebuttal.

Brendan Quinlan, owner of 326 Presidio Avenue, purchased the building in 2005. He met with Mr. Paxton at his apartment to discuss different issues, and a major part of the repair was in his bathroom so he agreed to take care of all the items as soon as possible. Mr. Paxton also sent him a letter with a detailed sketch of an enlarged and elaborate bathroom with a shower bench, a soap niche, a frameless glass enclosure, a new sink and new tiles which he did not agree to do more than what he was required to do which started the conflicts that developed and had been ongoing.

Mr. Quinlan said he was willing to do the repairs but Mr. Paxton refused them access to his unit. He desired to have a luxurious bathroom where he now has a regular bathroom. The tenant stopped paying his rent and applied his \$772 a month rental to purchase a shower valve for the bathroom which he expected to be refunded at the cost of \$1621. Mr. Paxton also stopped paying rent for 12 months and partially for the third month to reimburse and benefit himself.

As it was unreasonable to comply with his demand, it went on for a long time and he retaliated by contacting the Housing Inspection Division. The inspector verified and acknowledged that these problems existed and it should be taken care of. The Housing Inspector Ronald Dicks issued the Notice of Violation which they responded to immediately. They acknowledged that the problems existed and forwarded that letter to the management company to contact Mr. Paxton to make plans and move forward and make these repairs.

Mr. Paxton told the manager that no one would ever enter his unit. He contacted Housing Inspector Dicks and they had hearings which was not any closer to getting it done. The tenant wanted to make decisions which he said were in his lease on the color, quality and style on the replaced parts, which was on his lease and it was not a problem.

Mr. Quinlan said the tenant indicated this could cause disruption to his family life and wanted relocation a block away from the building at the Laurel Lynn Hotel during construction. He pre-booked a suite for his family but he still refused access to his unit unless he gets an elaborate remodel. The tenant claimed he gave them access on numerous occasions which they were allowed to look at the unit but refused them entry to schedule the work. It was a catch 22 situation and he did not know what else to do but he had exhausted every remedy, and contacted an attorney about how his residential lease was legally interpreted. He has done everything that he can and taken out a permit for the work but it is impossible to move forward and he urged the Board to take all of that into consideration. The scope of the work was submitted on the package and he went back to test the heating and it worked fine but Mr. Paxton continued to complain.

Mr. Quinlan said the tenant took this to the Superior Court and twice filed with the Small Claims Court where all cases were dismissed. Mr. Paxton continued as a difficult tenant and since Mr. Quinlan is a contractor and does this for a living he knows this is a simple job that could have been easily done if they were allowed entry to his unit to comply with the Notice of Violation. As of today, he will have his legal counsel to handle it because it went nowhere.

Commissioner Clinch asked for Department rebuttal.

Senior Inspector McKenzie stated that the decision was up to the Commission and he would abide by the Board's decision.

Commissioner McCarthy asked if it was the Department's position that the landlord did everything to comply? Senior Inspector McKenzie said he was not directly involved in this case but from the information he received and the landlord's testimony, he attempted to comply to resolve the issue of accessibility and the relationship between the tenant and the property owner in terms of overall resolving their problems.

Commissioner Walker asked what was the approximate time needed to do the work on this violation? Mr. Quinlan said about two to three weeks, probably two, outside of three, including all of the relevant inspections. He obtained the permit and had most of the materials. On a number of occasions, the subcontractors were ready to do the work and were denied access.

Commissioner Mar said the initial complaint came from the tenant and he asked if they talked with the tenant in regards to resolving the issue or complaint between the tenant and the property owner. Commissioner Walker suggested their tenant/landlord group get involved to help mitigate and said they have a whole program aimed at resolution on these concerns.

Senior Inspector McKenzie said he could refer them back to the actual complaint data sheet that was on one of the exhibits. There were no notes regarding a conversation between the inspector and the tenant to resolve the issue with the owner and he was not the initial inspector on the case.

Commissioner Lee said Commissioner McCarthy asked if the Department felt that the Appellant did everything possible within his power to correct this situation which he assumed was obtaining the permits and everything else. If that was the case, he wanted to know why was the Order of Abatement issued?

Senior Inspector McKenzie said the Order of Abatement was issued because the Notice of Violation was issued on October 8, 2009 and it was four years down the road. It was the type of situation where they tried not to hold onto cases for too long and to find resolution one way or the other and ultimately the responsibility was on the property owner, so an Order of Abatement was issued to comply with the Notice of Violation.

President Clinch asked for the Appellant's rebuttal?

Mr. Quinlan said the Department acknowledged he made his best effort to resolve the issue and was in daily contact with Inspector Dicks. They have a paper trail of their communications on letters from the tenant where he clearly denied access of the unit. Beyond that, he was powerless to do anything and required access to get inside the unit.

Commission Secretary Harris said three minutes was allowed for public comment.

Mr. John Paxton said as a tenant, he urged the Board to deny Mr. Quinlan's appeal. There were 8 violations that went on for almost 4 years and none were corrected. He and his wife had successfully delayed the compliance and some of them were basically simple such as cleaning the vents was not done. The owners/contractor, property managers and their attorneys had been in their unit on dozens of occasions and to say he denied them access was an outright misrepresentation. They can maneuver the violations into an excuse for not living up to their strong and unique contractual obligations under his lease which was negotiated with the previous owner. Mr. Quinlan failed to review his lease before he purchased the building and was bound by the contract he voluntarily agreed to be bound by.

The situation at 330 Presidio Avenue was one that was too common in the City and the water leaks were treated by Housing as a cosmetic problem when they frequently caused serious structural deterioration. As a result of the 1989 Loma Preita Earthquake, there was moderate damage to the building resulting from the wood deterioration. The building was cited and the owner was required to make 104F repairs which were never done. The water leaks seeped through the entire height of the northern wall for years and the present violation had no requirement for structural evaluation or even a building permit.

Mr. Paxton said in 2012, another violation was issued for water damage to the apartment below them which required the owner to paint over the problem. In his rebuttal package, he included the photos of the water damage to the unit on the first floor, two floors down, showed damage from the leaks from their shower, and the owner's worked only to perform a superficial cosmetic repairs without any inspections or structural evaluations with the probability of the structural decay that existed.

The building is a wood frame building and required to comply with the Soft Story Ordinance. It had other significant other problems which he hoped the BIC would recognize the wood rot was a structural problem for the City's housing stock. It appeared that the resolution was to have the court appoint a receiver to take control of the needed repair and he urged the Board to deny Mr. Quinlan's appeal to expedite the process required to repair the building.

Commissioner Walker asked about the statement made by the building owner regarding his requirement that seemed to expand what was already there. The Board is not a court of law and is not required to review the lease, but they are trying to resolve this issue. What was the issue regarding expanding the bathroom or the amenities?

Mr. Paxton said as a tenant, his rights are protected under the Building Code that states when showers are replaced they will be brought up to certain minimum size. It was a very small room and in order to get that minimum mandated statutory area the configuration needed to be changed. On the photograph in the Board's package, a large amount of tiles came off the walls and their shower pan had completely deteriorated and needs replacement, and when they are replaced the code requires a minimum area for that new shower and that configuration then triggered a change of design.

There was a certain minimum circle, you needed to be able to put in. He did not think that it was accessibility and believed that any shower needed to have a minimum size where it did not meet those standards it triggered some other requirements in terms of having a larger area. In order to have that work in their bathroom, the sink had to be moved and required some plumbing changed.

Commissioner Walker asked the Department if it was addressed in the building permit approval? Tony Grieco, Chief Building Inspector, said the Plumbing code did have a minimum requirement for shower size, 30 inches and 60 inches above the drain and 1024 square inches that was a separate issue addressed through the permit. Commissioner Walker said the Department would address those types of issues once the project started, just to be clear.

Mr. Paxton said Mr. Quinlan recently pulled his permit within the last two weeks and there was no mention of that and he recently received the permit. President Clinch said certainly, if the construction was not done per code, he would not get a sign-off and then he would have to rip it out. It behooved him to be aware of what the code requirement was, and assumed that as a contractor it would be done per code.

Mr. Paxton said he was optimistic that the work was going to be done appropriately and as pointed out the units below him had work done because of the seeping water. The probability of wood decay, it was merely cosmetic, without any permits or any inspection and he was very concerned that they have a building that has some serious structural problems. On this work there was no indication that this was being taken care of and performed by the code.

Commissioner Mar said that other violations were being raised but their inspectors have not cited those structural problems. Their inspectors only have the NOVs that addressed the bathroom problems and the paint. The issue of peeling paint in Mr. Paxton's dining and living room and his opinion that there were structural problems, but HIS inspectors had not cited that on the building and it was not part of their discussion today, unless the Department wanted to clarify otherwise.

Mr. Paxton said he was absolutely correct and perhaps Inspector Dicks tested his fingers into the studs and said that will be taken care of when the owner did his work, and he also said that he

cannot cite something he cannot see and this was a citywide problem. When you have years of water seepage through wood framed buildings, studs, and structural members deteriorated which he had seen in this building during the Loma Prieta Earthquake and this problem continued and raised this with the inspector and he said not to worry it would be taken care of. He was very worried because they had the whole height of the building where cosmetic and superficial repairs were made without any attention to that. On the list of 8 items which were cited, none of them had been done.

Commissioner Lee said Mr. Paxton mentioned some of these problems took a year of development to mold, mildew and such. Their records showed that a report for a complaint was filed at the Department of Building Inspection in 2009 and at that time, the inspection showed they were already missing tiles, mildew and rock. --Obviously it did not happen overnight. What happened prior to 2009 and what was done since he knew about the problem?

Mr. Paxton said it went on for years before that and there was a gradual deterioration of the shower and it started with the cracks. He brought it to the owner's attention and the building was later sold to Mr. Quinlan and when he bought it, the tiles started falling off, sheet rock started deteriorating and the bugs began appearing and the work needed to be done. When nothing was done, he ultimately contacted the Housing Division and would have preferred not to.

Commissioner Lee said he wanted to hear the property owner's response to that comment when the time comes.

Vice President Melgar said she has heard the appeal, but wanted to see some evidence to make a decision. She heard from the landlord and it appeared he was ready to go and there was no evidence where she can assume that he was acting in bad faith and only intended to do cosmetic repair.

They can only rely on the professional expertise of the Department's inspectors and they trust their assessment of the situation but she did not have any evidence to prove that this type of repair and replacement work necessitated a permit to enlarge the bathroom and whether the code mandates farther than the permit that he had pulled. Vice-President Melgar asked if Mr. Paxton's position was that he was not permitting the work to proceed if it did not meet with his professional opinion that the permit was inadequate?

Mr. Paxton said there were 8 items cited on the repair and not one of them had been done and the major one was the shower. He showed a photo viewed from a 90 degree angle, they have their shower which was deteriorated and two floors below him there was the shower, down on the first floor where nothing had been done.

With regards on what was his position, it was not rocket science when they have holes in the wall in other part of the residence where they have chipping lead-based paint that needed to be removed and there was not much discretion on that stuff and when it came to what his lease allowed that he tried to maneuver the Notice of Violation to skirt his obligation and the contractual rights under his lease, where he had discretionary control, when items were replaced,

he was not going to allow him to ignore those contractual obligations and rights. How come other items such as cleaning the flues were not done?

Mr. Paxton said that he did not know and there were many things that went on. Now Mr. Quinlan was in a world of financial hurt and he demonstrated that in the package that he just did not have the capacity to make these repairs and tried to buy as much time as he could. The building had a notice of foreclosure and there were tax liens, etc. He and his family wanted to live in a good, clean, safe environment where the building complied with the codes and the building laws.

Vice President Melgar asked if he would allow Mr. Quinlan and his workers access to the unit to do the repairs, which they had pulled permits for or was it his position that unless he agreed with the scope of work before he would let them in.

Mr. Paxton said he wanted to see a scope of work. Among other things, they were a family that had a normal routine and it was a fairly small apartment. When removing the only toilet and having major sheetrock work and repair, made the unit uninhabitable especially in the middle of the school year and no work was done during the summer season. The school year started again and there was certainly remedies to find them replacement housing. He had offered him solutions, some alternatives, and this had not come together. His family wanted the work done and been ongoing for many years and tired of it.

Commissioner Walker said it was somewhat of a conundrum and the permit had been applied for and received. Mr. Quinlan was ready to do the work and agreed to relocate the tenant to do it. She felt like until such time as their staff was able to inspect and address some of the concerns that he had, that would necessarily need to expand the scope of the permit, they were in between a rock and a hard place.

From what the Board had been given it was clear that the work needed to be done. It seemed like his routine had been disrupted already with the holes in the shower and those were the things they needed to address as a Department and to make sure that people live in safe and habitable places. At this point, someone stated that he was willing to do the work and had taken out permits and there was some disagreement about what color and the scope of it, but she felt like they cannot know those details until the work started.

The Board cannot make a decision on information that they did not have and was not before them, including other issues that might exist in the building. Hopefully staff can make note of those types of things on their inspection. As they inspected this job, it will be allowed to move forward. Generally in these kinds of situations, this Commission was limited as to what they can do, and they can deny the appeal, and hope to resolve the things in a way that would have the work done.

Maybe loosen the juggernaut and provide some resolution and she would like to see some immediate intervention with the Code Enforcement Outreach Program which included both the tenant and the landlord representatives to help resolve this quickly and these organizations tried to help get resolution in these kinds of situations. She felt for him and heard what he said. She

also felt for the building owner who had his idea about how he wanted to resolve the situation and felt somewhat stymied. She felt the Department needed to provide some intervention if allowed.

Mr. Paxton said that he and the property manager were seeing eye to eye and they discussed how to resolve the items. He had no problem with paying part of the construction costs. One of his prior attorneys suggested they both agree but it never got done. They had a prior contractor that said, here was the scope of what had to be done and he agreed. They had plenty of other agents who tried to intervene in a positive way to get the work done, and generally speaking, he agreed with him.

President Clinch asked if there was any more public comment?

Commissioner McCarthy said as a Commission, they have to fight hard to get the landlords to do anything in some of these cases and they have testimony where he was willing to do anything and it was a delicate situation between the tenant and the owner but as Commissioner Walker eloquently pointed out, they have certain perimeters that they have to work in and he believed they needed to uphold the abatement.

President Clinch asked if there was any more public comment?

Commissioner McCarthy made a motion, seconded by Commissioner Walker, to uphold the Order of Abatement and allow 60 days extension to complete the work.

Attorney Clark wanted clarification on the motion to uphold the Order of Abatement and wanted to know if the motion was based on his finding that the conditions were as stated in the NOV.

Commissioner Walker said that the work needed to be done. Commissioner Lee said he wanted some assurance that the tenant would also allow the property owner into the property to do the work. Commissioner Walker asked if they uphold this, and then the work was required, and then they gave them 60 days, was there a means by which the work can be forced? Would he be allowed to do the work that they permitted if the tenant did not let him in?

Attorney Clark said in order for the landlord to get access to the unit, without the tenant's permission, he needed a court order. There is no way he can force his way into the building and she was not a landlord/tenant lawyer. If there were provisions in the code for the Department to get an emergency order to go in and correct life-safety hazards and perhaps a substitute for Secretary Sweeney needed to address that and her understanding was the landlord on his own could not do that.

Commissioner Mar believed the intent of granting the extension to 60 days was to hopefully have the landlord with the Department's assistance and some community group have the landlord and the tenant groups, meet and mediate the access question, so that all of the work based on the permits pulled can be carried out and concluded. If that was impossible, they would rehear it after the 60 days and it was going to come back.

Commissioner Walker said the Board voted to uphold the Order of Abatement, and they were just giving them 60 days to do it, which was right since the work needed to be done. The question was, if they were not allowed access, it created a weird situation.

Attorney Clark clarified that the landlord could not force his way in but if the Board upheld the Order of Abatement and gave him 60 days; and when it expired, if the work was not done. There were permits the landlord did what he could have done. At that point, it would probably be referred to the Litigation Committee of the Department and the City Attorney's Office. Chief Building Inspector Grieco could probably speak more about it in terms of the City's enforcement and the City Attorney's Office at that point that would step in.

Commissioner Mar said although it may not come back to them, they would have more information from their Department, and the community groups in terms of their opinion in attempt to bring the two sides together. He believed that would go a long way in reporting to the Litigation Committee or to the next body because they would say at least they tried, and this was what the owner and tenant tried to do. If it was not resolved, at least the City will have an opinion through their Department about how both sides played out.

Commissioner Lee asked Mr. Paxton if he would let the property owner in to do the work? Mr. Paxton said he would certainly let the property owner in to do the work. They have 7 fairly minor items that did not have too much discretion and one major item on the shower repair and he would not simply waived his rights for control over quality of items that were used to replace it. He was quite concerned about a place to live and living with no toilet and sheetrock, having dust around and in the middle of the school year.

Commissioner Lee said they heard from the property owner that he agreed to relocate his family to another facility during the work and asked if that was acceptable to him? Mr. Paxton agreed but he gave him a list of materials that were acceptable.

Vice President Melgar said she was not an attorney and worked with tenants for many years and the landlord had quite a bit of rights under the California law. He had legal representation and it was his responsibility to find out what he can or cannot do. He had the right to access and this was why Mr. Paxton was savvy and negotiated on his lease. As a Department, they did not have the responsibility to enforce his lease on his behalf. They only have the responsibility to the codes in their process. She would caution them not to overstep their authority. In this regard, they were responsible for the violations as found by their staff who worked on their behalf.

She seconded Commissioner Walker's comments to uphold the Order and give them more time to encourage them to avail themselves of their relationships with the non-profits for mediation work because there was some negotiation that needed to take place and she hoped they would not see this case 60 days from now, but it was a difficult situation.

President Clinch asked to hear from the Department.

John Hinchion, Senior Building Inspector, said in regards to the access with a valid permit issued that was not relevant, and perhaps the City Attorney might comment and the inspector cannot do

the work if they did not get access on the initial permit and he wondered should any of this affect the permit issued?

Attorney Clark said as stated before, there were provisions in the code for emergency orders to be issued and for the Department under those orders for access which did not happen here. In the exception of an emergency order such as during an earthquake when buildings collapsed, the Department could obtain an emergency order for immediate access because of serious and eminent danger to the public or to the tenants which there was no mention of that situation. The landlord can go to a Superior Court and get an Order for access to conduct the repairs. If the court found it was necessary or rights existed under a tenant/landlord contract with emergency order exemption, no one can force their way into the property.

Tony Grieco, Chief Building Inspector, said on the two items, one was the Department certainly would have to facilitate any kind of outreach meeting to resolve this issue. With respect to their Department's actions if it were an emergency situation or life-safety hazard they will take the appropriate emergency order and enforce access to prevent the life-safety issue. On the permit inspection, they would leave if the owner of the property refused them access during the inspection. Under the permit, they have authorization to inspect the work but not inspect the rest of the premises and there was a limited scope of their inspection. If they ask them to leave, they will leave and seek an inspection which was the due process.

Commissioner Walker said was it not the case as he inspected the work which was permitted, if there were connected circumstances on rotting wood beyond what was anticipated in the initial permit, you would at that point note that.

Chief Building Inspector Grieco said the permit will have a defined scope of work and work performed to the codes. If it did not meet the codes structurally or any other provision to the codes, they will write additional corrections and require a revised plan to assure that full compliance was achieved.

Commissioner Walker said they have a motion and it might behoove them to hear this, although they had given them 60 days to report back next month at their next Abatement Appeals Board meeting. Attorney Clark said the motion was to uphold the Order of Abatement and not to continue the matter.

Commissioner McCray asked if they would impose the cost, to whom and from what point to what point. Commissioner Walker asked what were the costs to date on this? Senior Inspector McKenzie said since the Order had been appealed, they held back on the Assessment of Costs at this time and they would determine upon the issuance of the Order of Abatement. President Clinch believed it would be applied to the property owner.

Commissioner McCray asked if those costs were continuing to roll? President Clinch said at that point do they need the 60 days and would the costs continue to accrue during the 60 days? Senior Inspector McKenzie said it would if based upon the abatement and they were liable. Commissioner McCarthy said at the point of Order, did the Appellant have the right to come back and ask them to appeal that cost? Commissioner Walker said they have the opportunity

right now.

Commissioner McCarthy said if he tried to get in there and do the work and they penalized him, it sounded upside down. Commissioner Walker said as much as work was needed she believed the delay was an attempt to get a resolution. Senior Inspector McKenzie said basically it was a formula that if an Order of Abatement was issued, the Department was due an Assessment of Cost on an hourly basis. The cost for inspector time would be \$170 an hour, \$52 an hour administrative time and all rolled up into this case and assessed as Assessment of Cost to the owner of the property. In extenuating circumstances, the owner can appeal to the inspector up through the chain of command to the Chief in regards for modifying some of those costs.

Commissioner Walker asked if they uphold the Appeal and deal with the costs on a separate case? Attorney Clark said she was not sure but believed the Board had the power to waive the costs and she was fairly certain that the Board had the power to do that.

Commissioner Walker asked if there were any back costs? Commissioner McCarthy said they needed to take that into the motion. Commissioner McCray suggested they make the motion and then come back to the other motion of proposing the assessments. Commissioner Walker said it was all on one motion.

Commission Secretary Harris said the motion was to uphold the Order of Abatement and allow 60 days to get the work done and to waive the Assessment of Cost going forward and not the previous cost that was accrued. Commissioner Walker said during the 60 days there would be some advisement with their Code Enforcement Outreach Program representatives? Commission Secretary Harris said they can ask the Department to do that but it was not part of the motion. Attorney Clark clarified the motion was based on their finding that the conditions were as stated in the NOV and based on the testimony that the Board heard today.

Commissioner Lee said they did a fair thing because if the work was not done, it would affect the tenant and the tenant should allow them access otherwise he was hurting himself. He believed the property owner cannot do it and the Order of Abatement should stand.

Commission Secretary Harris asked for a roll call vote on the motion.

<i>President Clinch</i>	<i>Yes</i>
<i>Vice President Melgar</i>	<i>Yes</i>
<i>Commissioner Mar</i>	<i>Yes</i>
<i>Commissioner McCray</i>	<i>Yes</i>
<i>Commissioner McCarthy</i>	<i>Yes</i>
<i>Commissioner Lee</i>	<i>Yes</i>
<i>Commissioner Walker</i>	<i>Yes</i>

The motion carried unanimously.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items not on the Abatement Appeals Board Agenda.

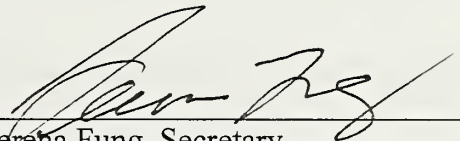
G. ADJOURNMENT

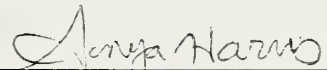
President Clinch made a motion, seconded by Commissioner Melgar, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 10:03 a.m.

Respectfully submitted,



Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary

**ABATEMENT APPEALS BOARD****NOTICE OF MEETING**

Wednesday, October 16, 2013 at 10:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

OCT 10 2013

SAN FRANCISCO
PUBLIC LIBRARY**AGENDA:**

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on June 19, 2013.

D. NEW APPEALS: Order of Abatement(s).**1. CASE NO. 6780: 21 Buena Vista East Avenue**

Owner of Record and Appellant: Waukeen Q. McCoy, 21 Buena Vista Ave. East, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: Reversal of the Order of Abatement.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272
Myrna Melgar, Vice President	Sonya Harris, BIC Secretary (415) 558-6164
Frank Lee, Commissioner	Teresita Sulit, Recording Secretary (415) 558-6267

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney (415) 554-4634

2. CASE NO. 6781: 2278 – 42nd Avenue

Owner of Record and Appellant: Maxine Pauson, 2278 – 42nd Avenue, San Francisco, CA 94116

Owner of Record and Appellant: Maxine Pauson, 72 Cameron Way, San Francisco, CA 94124

ACTION REQUESTED BY APPELLANT: Modification of the Order of Abatement to allow additional time to complete the work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

E. GENERAL PUBLIC COMMENT

F. ADJOURNMENT

p:aab\agenda\10-16-13.ts

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

Accessible MUNI/Metro lines servicing this location are the J-Church, K-Ingleside, L-Taraval, —Ocean View, and N-Judah at Van Ness and Civic Center Stations; 9-San Bruno, 71-Haight, and 42-Downtown bus lines. For information about MUNI accessible services call (415) 923-6142.



The Commission meeting room is wheelchair accessible. Accessible curbside parking spaces have been designated on the Van Ness Avenue and McAllister Street perimeters of City Hall for mobility-impaired persons. There is accessible parking available within the Civic Center Underground Parking Garage at the corner of McAllister and Polk Streets, and within the Performing Arts Parking Garage at Grove and Franklin Streets.

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POLICY STATEMENT OF PUBLIC COMMENT

FOR THIS MEETING OF THE ABATEMENT APPEALS BOARD--and until such time as a policy is formally adopted,--it is the interim cooperative intent of the Abatement Appeals Board of the City & County of San Francisco that, at the point so designated as **Public Comment** on the following Calendar, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board--excepting calendar items. With respect to calendar items, the public's opportunity to address the Board will be afforded when the item is reached in the meeting. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the chairperson may continue **Public Comment** to another time during the meeting.

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ABATEMENT APPEALS BOARD

Wednesday, October 16, 2013 at 9:12 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED November 20, 2013

MINUTES

A. CALL TO ORDER and ROLL CALL.

16/13
The meeting of the Abatement Appeals Board for Wednesday, October 16, 2013 was called to order at 9:12 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President

Myrna Melgar, Vice-President

Frank Lee, Commissioner (Excused)

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Debra Walker, Commissioner

Dr. James McCray, Jr., Commissioner (Excused)

Sonya Harris, Building Inspection Commission Secretary

GOVERNMENT
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D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board

John Hinchion, Acting Senior Building Inspector, Code Enforcement Division

Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on June 19, 2013.

President Clinch made a motion, seconded by Commissioner Walker, to approve the minutes of June 19, 2013.

Commission Secretary Harris asked for public comment on the minutes and there was none.

The motion carried unanimously.

The minutes were approved.

D. NEW APPEALS: Order of Abatement(s)

1. CASE NO. 6780: 21 Buena Vista East Avenue

Owner of Record and Appellant: Waukeen Q. McCoy, 21 Buena Vista Ave. East, San Francisco, CA 94117

ACTION REQUESTED BY APPELLANT: Reversal of the Order of Abatement.

NOTICE OF DECISION: In the absence of the Appellant, the Appeal is automatically denied. Therefore, the Order of Abatement is upheld and Assessment of Costs is imposed.

Inspector John Hinchion said he did not see the Appellant and asked if that had any effect on how they proceed? Attorney Clark said the Order stands if the Appellant did not appear and no one heard from them. She did not think that they needed public comment. Commission Secretary Harris said an Order of Abatement would be issued on the property.

2. CASE NO. 6781: 2278 – 42nd Avenue

Owner of Record and Appellant: Maxine Pauson, 2278 – 42nd Avenue, San Francisco, CA 94116

Owner of Record and Appellant: Maxine Pauson, 72 Cameron Way, San Francisco, CA 94124

ACTION REQUESTED BY APPELLANT: Modification of the Order of Abatement to allow additional time to complete the work.

NOTICE OF DECISION: At the request of Appellant's attorney, the matter was continued for 30 days and is now scheduled for November 20, 2013 at 10:00 a.m., City Hall, Dr. Carlton B. Goodlett Place, Room 416.

On their Agenda, Item 2, Case Number 6781, 2278- 42nd Avenue had been continued.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items not on the Abatement Appeals Board Agenda.

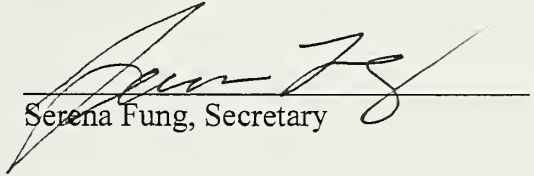
G. ADJOURNMENT

Commissioner Walker made a motion, seconded by Commissioner Mar, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 11:03 a.m.

Respectfully submitted,



Serena Fung, Secretary



Edited by: Sonya Harris, BIC Secretary



ABATEMENT APPEALS BOARD

NOTICE OF MEETING

Wednesday, November 20, 2013 at 10:00 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

Aired Live on SFGTV Channel 78

**GOVERNMENT
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AGENDA:

The Abatement Appeals Board (AAB) will take public comment on every item appearing on the agenda. Members of the public who address the Board have the discretion on whether or not they wish to identify themselves for the record.

A. CALL TO ORDER and ROLL CALL.

B. OATH: All parties giving testimony before this Board today will rise, raise their right hands and be sworn.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on August 21, 2013 and October 16, 2013.

D. NEW APPEALS: Order of Abatement(s).

1. CASE NO. 6782: 670 – 12TH Avenue

Owner of Record: Est. Of Christine Young, Jaa Teal Administrator, 670 – 12th Avenue, San Francisco, CA 94118

Owner of Record: Est. Of Mary Elizabeth Young, 726 Ferry Street, Martinez, CA 94553

Appellant: David Jah, 670 – 12th Avenue, San Francisco, CA 94118

ACTION REQUESTED BY APPELLANT: Modification of the Order of Abatement to allow additional time to clear title and complete the work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

MEMBERS OF THE BOARD DEPARTMENT REPRESENTATIVES

Kevin Clinch, President	Edward Sweeney, Deputy Director and Secretary to the Board (415) 558-6272
Myrna Melgar, Vice President	Sonya Harris, BIC Secretary (415) 558-6164
Frank Lee, Commissioner	Teresita Sulit, Recording Secretary (415) 558-6267

Warren Mar, Commissioner

Angus McCarthy, Commissioner

Dr. James McCray, Jr., Commissioner

Debra Walker, Commissioner

CITY ATTORNEY'S OFFICE REPRESENTATIVE

Jana Clark, Deputy City Attorney

(415) 554-4634

E. CONTINUED APPEAL: Order of Abatement(s).

1. CASE NO. 6781: 2278 – 42nd Avenue

Owner of Record and Appellant: Maxine Pauson, 2278 – 42nd Avenue, San Francisco, CA 94116

Owner of Record and Appellant: Maxine Pauson, 72 Cameron Way, San Francisco, CA 94124

ACTION REQUESTED BY APPELLANT: Modification of the Order of Abatement to allow additional time to complete the work.

Testimony, deliberation and possible action to uphold, modify or reverse the Order of Abatement.

F. GENERAL PUBLIC COMMENT

G. ADJOURNMENT

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KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE AT 554-6075.

ACCESSIBLE MEETING INFORMATION POLICY

The meeting will be held at the City Hall Building, located at 1 Dr. Carlton B. Goodlett Place, 4th Floor, Room 416. The closest accessible BART station is the Civic Center Station at 8th (at the United Nations Plaza) and Market Streets.

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ABATEMENT APPEALS BOARD

Wednesday, November 20, 2013 at 9:12 a.m.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416

ADOPTED February 19, 2014

GOVERNMENT
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MINUTES

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A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, November 20, 2013 was called to order at 11:25 a.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President, excused
Myrna Melgar, Vice-President
Frank Lee, Commissioner, (11:40 a.m.)
Warren Mar, Commissioner
Angus McCarthy, Commissioner
Debra Walker, Commissioner, excused
Dr. James McCray, Jr., Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board
John Hinchion, Acting Senior Building Inspector, Code Enforcement Division
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meetings held on August 21, 2013, and October 16, 2013.

Commissioner McCray made a motion, seconded by Commissioner Mar, to approve the minutes of August 21, 2013, and October 16, 2013.

Commission Secretary Harris asked for public comment on the minutes and there was none. The minutes were approved.

The motion carried unanimously.

D. NEW APPEALS: Order of Abatement(s)

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal and public comments.

1. CASE NO. 6782: 670 – 12th Avenue

Owner of Record and Appellant: Estate of Christine Young, Jah Teal Administrator, 670 – 12th Avenue, San Francisco, CA 94118

Owner of Record and Appellant: Estate of Mary Elizabeth Young, 726 Ferry Street, Martinez, CA 94553

Appellant: David Jah, 670 – 12th Avenue, San Francisco, CA 94118

ACTION REQUESTED BY APPELLANT: Modification of the Order of Abatement to allow additional time to clear title and complete the work.

NOTICE OF DECISION: The AAB heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decisions: (1) The conditions at the property are as described in the Notice of Violation and were not disputed by Appellant; (2) The Order of Abatement is modified to allow the property owner 30 days to obtain the necessary permits and one year to complete all work.

Vice President Melgar said the practice was to hear from the staff and the Appellant would have the opportunity to speak afterward.

John Hinchion, Senior Building Inspector, Code Enforcement, said the violation related to the construction of walls in enclosed space on the floor at the rear without a permit and the Director's Hearing took place on December 4, 2012 and an Order of Abatement was issued. No permits have been obtained to clear the violation and he recommended upholding the Order of Abatement, and imposing the Assessment of Costs.

David Jah, Appellant, said the property was in probate and up for sale. He explained to the Abatement Appeals Board that he did not have control to take out the money and do all the necessary things. On December 27th, the day after Christmas, he discussed with some contractors and they went there to obtain Joseph Chan's signature and the other required signatures. He was still in the process at 400 McAllister and has gone back and forth. His

mother passed away in 2000, after a complaint was made. The complaint was anonymous and his mother did not understand what went on and he had nothing to do with it.

He went to the Department of Building Inspection and did not find any permit for the building. It was just a frame and built in the 1960s. His mother had a permit which was on file and there was a home improvement loan through the City and County in the 1980's that was done. His mother paid the fees and the City signed off and he believed everything was fine. He was unsure if the complaint was done in 1980s or 1990s but he did not ignore this, and was diligent to stand up for the property which he inherited.

Vice President Melgar said she would like to hear from the staff again whether it was a fact that this building was in probate and would be sold and if the recommendation was for them to act on this at all.

Inspector Hinchion said he did not want to elaborate too much on this, but in their research they currently discovered a Superior Court decision relating to people involved with the property and there was a deed recorded which stated one of the 50% owners was deceased and that someone else had ownership. The Superior Court's decision was the document was not in order and the deed was reversed. It would be best if the Board moved forward cleanly and upheld the Order of Abatement rather than expose the whole ownership details in public. He understood that no one was living there and the building was vacant.

Commissioner McCray asked the staff what needed to be done, and what was the approximate cost of that? Inspector Hinchion said it was just a matter of obtaining a permit to legalize or remove the construction that was done. There was no value determined but his experience from the description was about \$5,000 or \$10,000 worth of estimated work. It would be cheaper to remove everything and return the building back to its original state before the alteration. In many situations, it would be less than \$10,000.

Commissioner McCray said the need was to follow the plan to move on which was not done? Inspector Hinchion said no permit was on record at this point. Commissioner McCarthy asked the person who filed the Appeal and if that would carry any weight if that person was no longer pursuing this Appeal? Inspector Hinchion said that was what he alluded to earlier. The status of the Appellant was questionable and he did not want to pass any remarks and anyone was entitled to Appeal. Commissioner McCarthy asked if there was no representation of the Appellant? Inspector Hinchion said not of the owners of the property. Commissioner Mar said he seemed to be holding some permits and the Appellants had not filed the permits.

David Jah, Appellant, said this was incorrect and there had been residents at the estate since he was born in 1973 and that was where he lived with his sister. He paid the taxes and recently cleared up the lien at the beginning of the month. He had these done but his contractor came and forgot to present these, the lady wanted to have drawings of the existing design and prepared the proposed design which needed an architect. She said the plans did not have to be produced by an architect and he was new to this and has tried to take care of this matter. Should the property be sold, he was the firstborn in his family and was an interested party in this matter. Mr. Jah said he paid the property taxes which was why he filed the Appeal and the work. The estimate was

about \$4,000 which led him to believe there were two different estimates. If the Board wanted to see some drawings to have a better idea of the charge of what it took and there was one permit for \$1.00 and the other for \$400. He did not know what the basis was and he was going to present these permits and wondered how that worked. The presence in the probate will be the jurisdiction of the courts on this matter as opposed to what the outside sources as it is currently in probate.

Commissioner McCray was confused and asked the City Attorney to help him understand the probate issues, what the impact would be and whether they should uphold the abatement and assessed charges. Attorney Clark said she did not have everything referenced in front of her and there was a dispute as to ownership. The Probate Court probably sorted that out, but it did not mean that the Board cannot uphold the Order of Abatement against the owner of record. If it was determined later who was listed as the owner of record and that had to be changed then the Order of Abatement was against the property.

Commissioner McCray asked staff what was the current Assessment of Costs? Secretary Sweeney said the Form 8, the pink form of the building permit which showed one was incomplete and another permit went through some of the stations on the 5th floor. There was no receipt to indicate if he had paid for either permit and he technically did not have a permit.

Commissioner McCray asked for how long and how much on the cost. Inspector Hinchion said the initial fee due was \$1,224.25. Commissioner McCarthy said Inspector Hinchion mentioned the removal would satisfy this with a permit and would dramatically change the \$1.00 amount and no drawings were required? Secretary Sweeney said the drawings for removal of the partitions or the walls and showed them an existing and proposed single-family, 2-story drawing they did not require a design professional. Commissioner McCarthy asked if what he handed them would suffice?

Secretary Sweeney said there was a permit for \$400 to remove two walls and if indeed there were two walls that would suffice. The Notice of Violation explained about three rooms and what happened prior to getting a Notice of Violation they had a sunroom and underneath the sunroom someone filtered into to make a sunroom they made a storage room and it was not about habitable space. Commissioner McCarthy asked if that was removed with a permit, he would not have to do any more structural work and would be satisfied it and they still had one outstanding issue?

Inspector Hinchion said if they did all that with the permit and had the permit signed off and provided to them but regardless of whether they did or not, they would still uphold the Order of Abatement because they will receive the initial and final fees to cover the costs involved in this case.

Vice President Melgar announced that Commissioner Lee had joined them.

Commissioner McCarthy said it would dramatically reduce the burden to the owner if he removed it. Inspector Hinchion said if they wanted to legalize what would be a whole new space

underneath the rear porch, maybe about \$20,000-\$30,000 or if they chose to remove it with a permit it would reduce the cost substantially.

Commissioner McCray asked if he was permitted to do that while in probate now? Attorney Clark said she did not think so, but whoever the owner of record is had to come in and get the permit was her understanding and again, she did not have any of those probate papers in front of her but she understood that based on the staff report there was a dispute as to the owner and the Probate Court would be sorting that out. Commissioner McCray said he cannot do that right now until things are worked out. Attorney Clark said that was her understanding.

David Jah, Appellant, said the probate will be taken care of in a civil matter. It was a civil matter that they were protesting with their cousins and deceased aunties 50% ownership and that was where it was at.

For the record, he operated a non-profit after school program from San Francisco State for underserved youth in the basement and he intended to legalize downstairs to accommodate the students, handicapped or not. He initially wanted to address the entire issue which was why he filed an Appeal and requested more time.

Vice President Melgar said they were sort of in a quandary and if they upheld the Order of Abatement, it was their clock ticking. He was in a catch 22 situation because he cannot actually do any of the things they asked of him. According to Attorney Clark, they cannot enforce it until the probate matter gets resolved.

Inspector Hinchion said just for clarification, the original Notice of Violation, believe it or not, was in 1997. Vice President Melgar said but she was deceased. Inspector Hinchion said with that as the backdrop, were they going to delay it further, and he was embarrassed in coming before the Board with the first Notice of Violation from that date. Vice President Melgar said in terms of the outcome that they wanted she was having a hard time seeing a clear path to something that was desirable for them under the circumstances.

Inspector Hinchion said right now, the ownership until it was all cleared up. The status now there were deeds in place with one family member 50 percent and another family member 50 percent. Both of those individuals were deceased and naturally when there were two parties involved, there were potential disputes. If the Order of Abatement was upheld and the fees were clarified as being what they were, there would be clarity from the Court whenever they make a final decision, it will encourage the representatives from both sides of the estate to work together. If the Order was not upheld and then how would the court decide how to divide the responsibilities? From everyone's perspective, it would be clear if the Order was issued and extend the time period to get the work done, but if the Order was in place then everyone can try to resolve an old 1997 case otherwise the case would still be open and he wanted this case closed.

Commissioner Mar made a motion, seconded by Commissioner McCray, there was no dispute about the finding of the staff that these violations were cured and no dispute they spent the time on the warranted fees and uphold the Order of Abatement and have the property owners,

whoever they may be, allow them 60 days to pull the proper permits and proceed with the work.

Commissioner McCarthy said the Appellants were aware this would continue more than 30 days. They needed to make a decision and concurred with staff on this. They attempted to clear these issues and he would second that as well.

Commissioner McCray said on the motion, if they gave them 30 days to put the permits in place and to move things along as well as for the court to make their movements which was what 30 days gave him? Attorney Clark said Commissioner Mar's motion was to uphold the Order of Abatement and allow them 30 days to complete the work. She had no idea how long it would take any disputes about ownership to get resolved and she had no idea whether that was an appropriate amount of time.

Commissioner Lee asked if they had 30 days to complete the work or 30 days to apply for the permit? Commissioner Mar said he was willing to modify to make it clear for 30 days to pull the permit and to obtain a permit. They can work with a contractor or people involved to work with the staff and how long it would take to complete. Commissioner McCarthy said do the basic removal, to the type and not go beyond that and he believed that 30 days was probably not going to be enough time but do the bare minimum.

Attorney Clark recommended not leaving the date they were required to complete the work open-ended which was the problem of 30 days to pull the permit and what period of time to complete the work. Commissioner Lee asked how long they have to complete the work? Secretary Sweeney said he would have at least a year to complete the work which would be the least amount of time they would give. If it was a \$1.00 permit, he would have one year to complete the work. Commissioner McCray asked Attorney Clark if they did not have to put that in the motion?

Attorney Clark recommended including it in the motion to uphold the Order of Abatement and pull the permit within 30 days. There would be an end period for the work and it seemed that a year was workable based on her understanding of the process of how it works. Vice President Melgar asked if the Commissioner had to restate the motion?

Commissioner Mar restated the motion that they would pull the permit and pay the fees within 30 days and they have a year to complete the work.

Commissioner McCarthy asked Inspector Hinchion, just because obviously they have a stake in getting the right thing done here, if he agreed with this? Inspector Hinchion agreed that was what he waited to hear, and one year completion which was enough and because the clock stopped somewhere which sounded good.

Secretary Harris said there was a motion and a second and called for public comment on the motion? There was no public comment.

Secretary Harris called for a roll-call vote.

Vice-President Melgar	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes

The motion carried unanimously.

E. CONTINUED APPEAL: Order of Abatement(s)

1. CASE NO. 6781: 2278 – 42nd Avenue

Owner of Record and Appellant: Maxine Pauson, 2278 – 42nd Avenue, San Francisco, CA 94116

Owner of Record and Appellant: Maxine Pauson, 72 Cameron Way, San Francisco, CA 94124

ACTION REQUESTED BY APPELLANT: Modification of the Order of Abatement to allow additional time to complete the work.

NOTICE OF DECISION: The AAB heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decisions: (1) The conditions at the property are as described in the Notice of Violation and were not disputed by Appellant; (2) The Order of Abatement is modified to allow the property owner 30 days to obtain the necessary permits and 30 days to complete the work.

Chief Housing Inspector Rosemary Bosque said she wanted to put in context this particular single-family dwelling and why they were here today. In February, 2012, she received a complaint from an adjacent property owner at 2278 - 42nd Avenue. The concern came to her from the property owners at the rear of the subject property fronting on 41st Avenue. The complaint was on a tree in the yard of the subject property that was imminently ready to fall down and caused an imminent hazard to the adjacent property.

At that time, DPW was involved in this and they issued an emergency order and took the tree down because the property owner was non-responsive. In March, 2012, they went to the Litigation Committee who recommended referral to the City Attorney because there was a Notice of Violation previously from 2010, citing from exterior inspections that the property habitually lacked maintenance and they had complaints from adjacent property owners.

She showed a picture taken in August of 2002 on the front of the building. Not much had changed and there was a zero lot line between the subject property and the properties on either side of it. In March, 2012, they referred the case to the City Attorney and there was a subsequent

inspection that the property owner facilitated in July or August. Those photos in their package showed the interior of the subject property at 2278 - 42nd Avenue. She showed some photos that indicated the property had issues and some of the interior rooms of the property.

There were issues with the weather proofing, molding and mildew, etc. As a result of this inspection, they wrote another Notice of Violation which had outstanding items as well and the property owners were not responsive. They continued to get complaints from adjacent property owners, given the state of the property. Mr. Freeman assisted the property owner and wrote a letter to them in June 2013, stated they needed more time to work with some issues with the property owner and requested August or September to comply with these items.

In November, 2013, they asked for access into the property which had not occurred. They were concerned the timetable of the property owner did not appear to be conducive to what the adjacent property owners had to deal with and also the continued deterioration of the property. Also, the current Assessment of Cost was over \$2,000 for their time and at this point she did not know what the City Attorney fees were and a lawsuit had not been filed. They hoped Mr. Freeman could help her with this. Although he did not receive a copy of the staff report until a few minutes ago and had not seen that, but noticed this particular Hearing, and he was somewhat familiar with the issues because of the conversations they had with the staff on this. They anticipated some guidance on an action plan and allotted her more time to see certain things happened to facilitate another inspection to see where they were right now.

Scott Freeman, on behalf of the Appellant, said he hoped they shared the same goals of having this property fixed up on a timetable they can all work with. Since April 2012, he was personally involved with this issue and it should have entirely resolved by now. There were physical and financial impediments that prevented that from happening. Since April, he offered to participate, assisted at meetings and discussed with whoever contacted him about these matters but intentionally or not, he had not been informed.

He understood there were budgetary concerns on the Department's behalf but when he did not get a Department's staff report, which he requested months ago, he returned phone calls to people that knew he was involved which complicated the handling of these matters. They never denied access to this property, and the staff report noted that he had the opportunity to review this morning and he called back to offer to set up the inspection. As you may be aware, there was a parallel set of issues involved with the DPW and the DPH. The homeowner's inspection occurred and disputed the purpose which appeared it was not the case and was willing to provide the inspection.

The inside property conditions had not changed much although she focused mainly on the neighbors complaint about the outside of the property. He felt the property was not as attractive as theirs and when those complaints came in he focused his efforts on that but he was limited and would be open to suggestion and assistance. He was not paid for his efforts on this matter and worked pro-bono because he believed in this cause and this issue should be corrected if there were a timetable that everybody could live with and continued a dialogue to assure it would happen. He was open to whatever suggestions the Board had and in that regard would be willing to participate. However, the homeowner was continuously assessed the costs which will not get

them to a place where this building were fixed up but it will effectively penalize her for not affording these improvements required to be made through this property. He wanted to believe there were human elements that were a component of this case and they can deal with these issues and he respected the concerns. Again, he was open to assist and cooperate in meetings with whoever might be willing to meet with them to help with the action plan.

Vice President Melgar asked if his client was in contact with an organization called Rebuilding Together and if they helped her? Scott Freeman said she was in contact with Rebuilding Together. Her discussion with them indicated they did not have the availability to assist her which was largely the problem he had in attempt to find her assistance that either she did not qualify for some reason or another generally based on her age or the funding was no longer there. He was also in contact with the Mayor's Office of Housing and discussed with Marv Brands, which led him to believe they were able to assist for a certain aspect of their peers but he understood the principle issue at this point was the roof.

Vice President Melgar asked if she had applied and was this just a conversation with Marv?

Maxine Pauson, Appellant, said they applied with the Mayor's Office of Housing and needed to comply with the violations which she can correct herself before she can process the whole application, like clearing the debris, all of the backyard and exterior work. Rebuilding Together or the Mayor's Office on Housing did not do any yard work and she worked on all of that herself which was the next inspection with the Department of Public Health and the Fire Department was the last inspection for the exterior work. Vice President Melgar said the program of the Mayor's Office of Housing was on financing and did not provide the labor.

Maxine Pauson, Appellant, said they would not do the roof and there were things on the violations she had to correct before she can apply for the program for the interior which she was eligible. Vice President Melgar said it did not preclude her from applying and she should apply and negotiate with them what she can or cannot fit into the scope of work with the financing. In terms of what Chief Inspector Bosque needed from her was a timeline that would be doable and understandable. In obtaining the financing for the things she knew was needed did not preclude her from obtaining other resources elsewhere, but she suggested it should be the first step to apply for it to see if she was eligible and perhaps Mr. Freeman could assist her with that.

Scott Freeman said this may possibly be a misunderstanding but his discussions with Marv Brands led him to believe the financing was not available until some of the other issues were corrected. Maxine Pauson, Appellant, said she met him at her home and she had other unfinished matters before she can formally put in an application and work on those things. Commissioner McCarthy asked who lives in the building and if there was a debt or loan on the house? Scott Freeman said the building was vacant and it was a matter to afford a new debt on the property.

Commissioner Mar said it appeared that other than the construction costs, it seemed like many of the violations was the amount of things that was in the house, such as a lot of clean up and removal of many improperly stored items that would cause fire hazards and other problems. He was a little wary about what had been done to remove the stuff which would not incur any

construction cost, or require any permit and only required some cleaning. Without the inspectors going in and he did not know how long it had been. The pictures before them if it appeared like today these would be his main concerns.

Scott Freeman said in regards to those items stored within the house, he believed the efforts had been made and specific instructions were given in what areas to improve. If it was a matter to walk through to identify which areas that were problematic at this point, they would be happy to facilitate that but with these type of concerns, which they probably had some experience, it was not simply a matter of parking a dumpster in front of the house and have somebody haul this out and place in the dumpster. There was more of a process to that which involved the homeowner's time and when she was pressured by DPW and DBI, her ability to focus on what was inside of the house became lessened.

The house was vacant and substantial efforts had been made to clean up. They were prepared to allow another inspection and targeted the particular areas that may be of concern for a fire hazard. He saw some of those pictures and some areas that perhaps appeared not as nice as they could be and other areas that may be potential fire hazards. A targeted clean up could be done without warranting an Order of Abatement.

Vice President Melgar said it was clear to her that this owner needed some assistance and there were some resources available through the Department of Public Health and perhaps Chief Inspector Bosque could help them out that there were people within the Department of Public Health who had done work with people who had a lot of things, she did not know if that happened or was made available to Mr. Freeman and his client but she believed they can provide assistance in that way in terms of connecting the people with the resources. It was important they had a timeline because this can go on for a long time and it will open up his client to further liability from the people around her who were being impacted and they did not want that. He can address what was doable in terms of the timeline and if they were to extend the time. What would be doable here?

Scott Freeman said at this particular moment, efforts to focus on getting the roof repaired because of the impending rain, and they hope to address the roof within the next month and from there to look toward these interior issues of cleaning up the inside things. Since they were doing the interior repairs and if they pursued the financing through the Mayor's Office of Housing that will take time as well, assumed efforts could be made to get this roof done within the next month or perhaps two months. He hoped to have maybe six months time to focus on the interior issues, and the homeowner made steps to have these things done and it was a matter of having the money. She has a permit to allow her to do the roof repairs but she did not have the money. In terms of the six months completion date for all work done and the priority with the roof immediately done to insure there was no real danger of the roof falling down and they can focus on the interior issues over the course of next few months after that without worrying about the water coming in.

Commissioner Mar said he was still bothered by the timeline and the pictures. He believed it was as simple as pulling the dumpster up and everything in the house goes in there and especially when it was vacant which would be a lot less costly than worrying about the cost of

the roof and it would go a long way in showing some good faith.

Scott Freeman said efforts were made to clean up. It was not that simple and this public forum was not the appropriate place for him to discuss the reasons. If it was simple, it may have been completed and they would have dumpsters out there and the items would have been taken out. He would be happy to discuss these issues in a more confidential setting but believed this was not the appropriate setting for them to have this discussion. Vice President Melgar said their staff had been open to have discussions with them and she hoped the Board can appreciate that as a policy-making body and charged at looking in this Appeal on whether or not it fits within the criteria and their responsibility to have empathy for his client. They wanted to try to work with a responsibility to the Building Code and to all property owners around it. It was on them to make sure that things get done and that there was a reasonable timeline for everyone.

Scott Freeman said he completely agreed and understood that. He viewed the history a little bit differently than it was presented in the staff report and had seen some progress. The trees were not there and the houses were secured from the trespassers and there were substantial efforts made to clean up in spite of the photographs. He understood the timetable was not what they would like but there had been significant efforts and it has taken more time than they would all like. He would be happy to set a time to meet and there was already an inspection set next month for other purposes or they certainly had no objection to providing access earlier if that was an issue.

Commissioner McCarthy wanted clarification on the tree that was removed and who paid for that? Vice President Melgar said that DPW paid for it. Commissioner McCarthy said in his statement, they had to pay for the removal of the tree, not the homeowners. Scott Freeman clarified that the tree came down at the City's expense. It was in the yard the homeowner made significant efforts to remove over the course of the next few months.

Chief Inspector Bosque said DBI did not ask for improvements but asked the property owner to address long-standing issues of not maintaining the property and it was maintenance, cleaning and sanitation. She understood that DPW wrote the notice, posted the building and did not get a response on the tree. The property owner took the tree partially down in large sections away but not all of it and the City took the action and absorbed the cost and added the cost to the property owner.

It was a pattern with this property owner and she did not know what the property owner's goal was. Do they want to have it as rental property and did she want to occupy it, and she was unsure, but it was clear to them that they had a history where the property had been greatly neglected and impacted the community surrounding this property. They did not believe the amount of work that went on was sufficient, given the fact that this was referred to the City Attorney last year and they had none of this going back at least the exterior issues from 2010 on.

In 2013, there was very little to show for it and all they can agree on whether or not a suspension had been facilitated. They had the existing Notices of Violation where it should be clear and she wanted to thank the Commissioners for the questions because they were relative to the issue of why an application was not applied to get the assistance. Their research showed the City was not

encumbered and sorely expected to see more movement and she would like to see some single kind of action plan done within 15 to 30 days on a 15-day increment.

As of today, she believed it was reasonable to have an Order issued in order for interested buyers to purchase this property with knowledge of what kind of Notices of Violation it had on it. They have a Subordination Program which she would be obliged to prepare a Subordination Agreement if required for taking the money out of the property. Aside from that, they needed to have some movement and had not seen anything concrete which was their concern and what should they inform the concerned adjacent property owners about what was not happening.

Chief Inspector Bosque said they referred it in March, 2012 and they had a Notice of Violation opened on the exterior of the property from 2010, and it reached critical mass when she received a phone call about the tree in the back and there was quite a lot of neglect from that and the exterior of the structure itself.

Vice President Melgar asked if they upheld the Notice of Violation today, would this inspection next month still happen? Chief Inspector Bosque said they would definitely reach out to the property owner and her representative to facilitate another inspection and would be more than happy to meet with her attorney and give them some guidance on what things to attack first or secondarily, but she believed the Commissioners raised the issue and beyond the scope of maybe this property was already going to need assistance and believed she cannot do this on her own which was why they tried to give her time and encouraged an action plan through the assistance of a representative and they can do that if they will let them in. They wanted to do an inspection but strongly felt that absent some kind of a workable plan that the Hearing Officer should be upheld and the Order should be recorded.

Vice President Melgar said she wanted to walk him through a possible action plan. If they were to uphold the Notice of Violation and the property owner applied for a loan from the Mayor's Office of Housing and maybe the abatement and the money. Chief Inspector Bosque said she had a recorded Order from DBI, if anything that might help to expedite that process. If they wanted to go to a regular bank to get a loan, the Housing Department can offer her the subordination process which will walk them through if she needed that. They are definitely willing to work with them but they needed to see some movement.

Secretary Harris called for public comment on this item, and there was none.

Commissioner Mar made a motion that there was no dispute of the violations as put forward by the staff, so he would like to uphold the Order of Abatement and recommended the staff to do a re-inspection within 15 days to see if at least some of the debris had been removed which will take off some of the violations. It did not all have to happen immediately but he would like to propose at least for those things that were possible in the reasonable amount of time within 15 days that all of the debris in the property was removed as it was a vacant property.

Vice President Melgar said she seconded the motion to uphold the Order of Abatement. Attorney Clark said to allow 15 days to complete the work. Commissioner Mar said just the debris part because it did not require any permits.

Vice President Melgar said she cannot second that part of Commissioner Mar's motion and withdrew her second of the motion. She believed those issues about people's stuff were very complicated especially for elderly people and there were all sorts of issues that the Department were not equipped to deal with. It was much better dealt with by someone at the Department of Public Health and she did not know if 15 days was sufficient. She would support upholding the Order of Abatement and would encourage Chief Inspector Bosque and her staff to put together a small working group with one or two meetings with the people from MOEN and the representatives to see if they can come up with a working timeline, but with the time ticking on the Order of Abatement and she would not put a timeline.

Attorney Clark said to clarify the Order of Abatement currently stated that the Appellant had 7 days to complete all work appropriate building permits required and that was the way that it read now. Commissioner McCarthy said the 15 days was kind of fair and based on the presentation today, he did not see very much hardship here and cannot understand why this house was not cleared out. He would uphold the Order of Abatement and stick to the guidelines that were in front of them on how that should be performed.

Secretary Harris said Commissioner Mar made the motion and asked if Commissioner McCarthy seconded it?

Commissioner Lee wanted clarification on the 7 days for obtaining the permit to fix the roof or if it was for everything. Attorney Clark said perhaps the staff would clarify the way that she read the Order of Abatement to complete all work. Vice President Melgar asked Chief Inspector Bosque if she recommended the 7 days to complete all of the work?

Chief Inspector Bosque said she recommended that when they went to the Director's Hearing. Based on what she heard from the Commission that they should understand also and remember was this was now a City Attorney case and the failure on the part of the property owner to comply with an Order of Abatement had connotations that go to civil penalties under the Housing Code in fairness to both sides. With respect to this, the Board should consider and they have the power to amend the Order to state all work be based on the presentation and all work that was required must occur within 30 days. The Board can say that if they wanted to and this will give her 30 days, given what needed to be done. They could also make a referral also to a agency, not City agency, that had a mentor peer group that dealt with these types of issues which she definitely can give them the information and work with them on the re-inspections but it depended on what the Board wanted to do.

She wanted to bring to their attention that, if she was given 7 days and locked her in an area of more consequences because it was a City Attorney case. It would be more realistic to complete in 60 days but that was the Order reports whether she was violating the Order. The only context or connotation was if she breached the Order and they would have to deal with whether they filed the lawsuit and civil penalties under that. She wanted them to understand, if they gave her 60 days and issued the Order, they had something recorded on the property and that would be fair. It would give her some time, given that if she had the assistance but she would not know how long it will take once she applied for a loan. They needed to see some action while she

waited for financing. It would be more reasonable if they gave her 60 days, given what could happen. They had not filed a lawsuit yet but that might help to show some good faith on her part.

Commissioner Lee was sympathetic to what he mentioned about the items in her home and having it open-ended would not encourage the homeowner to seek assistance. At the same time, he believed the 7 or at least 15 days was unreasonable and would be inclined to say 30 days, which was a midway point to help encourage the homeowner to seek assistance and perhaps their message would help her to know they were serious.

Commissioner Mar was amenable to modify his motion to Commissioner Lee's suggestion to uphold the Order of Abatement and give her 30 instead of 7 days. Vice President Melgar asked Chief Inspector Bosque for clarification, if they made a motion on the floor, the 30 days for completed work meant applying for financing at the Mayor's Office of Housing on their processing which can be lengthy and do the work done which was a lot.

Chief Inspector Bosque said the Order did not speak to the issue of her applying for a loan and it was up to her but the Order was the issue before the Board was on compliance with the Notice of Violation which was her decision and independent of that. She definitely would discourage the Board to place a condition in there that she had to bring a dumpster up there and empty the building within so many days because that gets into whole other assortment of issues that the Commissioners touched upon and they cannot enforce it that way anyways. They have Housing Code violations that were articulated that was clear. If she violated the Order, the issue would be that she will be subject to penalties under the Housing Codes if they litigated or there were some discussions between her and the City Attorney. In some ways, the City Attorney were free to do that because they referred it to the City Attorney but at least 30 days was more reasonable for her than 7 days at this point in time moving forward given what they were seeing.

Vice President Melgar asked if they were to vote on this and everybody agreed to 30 days, and within 30 days, the property owner take no action, the City Attorney would handle. Chief Inspector Bosque said the City Attorney can move forward now. At that point in time they will see that nothing had happened and they have a recorded Order. The Housing Codes allow them to move forward anyway. In this case they hoped with the assistance from Mr. Freeman she would move forward. Vice President Melgar said suppose that in the 30 days she applied for a loan and did a bunch of things that was marked progress and not quite done. What would happen then? Chief Inspector Bosque said in that situation they would communicate that to the City Attorney and it would be taken into consideration. She would not know the outcome because the City Attorney had to be free to work with the property owner. They definitely would be more than happy to go back to let the City Attorney know what they saw and the progress that was made.

Commissioner Mar restated the motion, seconded by Commissioner McCarthy, given there were no disputes with the staff fact findings of the Notice of Violation, he would like to uphold the Order of Abatement and give the Appellant 30 days to complete the work.

Secretary Harris said there was a motion and a second to uphold the Order of Abatement and allow 30 days to complete the work. There was no public comment and Secretary Harris called for a roll-call vote.

Vice-President Melgar	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes

The motion carried unanimously.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment.

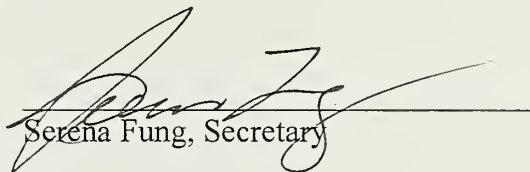
G. ADJOURNMENT

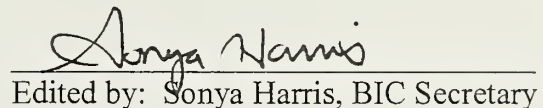
Commissioner Mar made a motion, seconded by Vice President Melgar, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 12:27 p.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary

